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THE

LAW AND PRACTICE

OF

FOREIGN ATTACHMENT

IN THE

Lord Mayor's Court,

UNDER THE NEW RULES OF PRACTICE.

WITH

AN APPENDIX

OF

THE FORMS OF PROCEEDING IN ATTACHMENT,
AND IN ORDINARY ACTIONS.

BY

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"Optimus interpres rerum usus."

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TO

THE RIGHT HONORABLE

JAMES ARCHIBALD STUART WORTLEY, M.P.,

RECORDER OF LONDON,

JUDGE OF THE MAYOR'S COURT,

THIS BOOK

IS MOST RESPECTFULLY DEDICATED

BY HIS

OBLIGED AND FAITHFUL SERVANT,

THE AUTHOR.

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INTRODUCTION.

A decision having been lately come to by the Court of Aldermen to throw open the Lord Mayor's Court to "all attornies and solicitors of the superior Courts at Westminster who shall apply to be admitted as practitioners therein," it is probable that the Court will be much more resorted to than it has hitherto been; and more particularly for the purpose of making attachments.

It has been thought that a work upon the subject of Foreign Attachment would be useful to those members of the Profession who have not been accustomed to that proceeding; and the Author has, therefore, endeavoured to explain the law upon this subject as concisely as its nature will admit. It has been his object to lay before the reader in a clear form, the nature of the custom, the mode in which it must be enforced, and the manner in which an attachment may be dissolved or defeated. He has, indeed, done little more than collect in a form, as he hopes, more convenient to the Pro-

fession than has hitherto been accomplished, the leading authorities upon the subject; and in the performance of that task he has referred to the various publications which have been in use, amongst those who have hitherto practised in the Court. It will be readily understood that the practice of a close Court, such as the Mayor's Court has hitherto been, should in process of time have become in a great measure traditional; and the object of the Author in the following pages has been, to search out the authorities upon which that practice was founded, and by referring to such authorities, to correct the errors which had gradually crept into various works on the subject. He hopes he has been successful in this attempt. One error which very generally prevailed, notwithstanding the decisions of *Wood* v. *Thompson*, and *Bromley* v. *Peck* (*a*), was to consider an attachment by the custom to be in the nature of an arrest; and had it not been finally corrected by the decision of the Court of Queen's Bench, in the case of *Day* v. *Paupiere* (*b*), the custom would, for all purposes of utility, have been entirely destroyed; inasmuch as a cause might have been removed into the superior Courts without putting in special bail, and the plaintiff thereby deprived of the security which his attachment, by the custom, of the money or goods of the defendant afforded him.

(*a*) 5 Taunt. 851 and 852.

(*b*) 13 Q. B. 802, and see *Bastow* v. *Gant*, Id. 807.

The Author thinks it will not be foreign to the purpose of this work, which treats more particularly of one of the customs of the city of London, if he introduces a few observations respecting the customs and charters of London generally. And first, let it be observed, that the customs of the city of London differ from those of all other places. They were confirmed by William the Conqueror (*c*), and afterwards by all his successors, by whom also, from time to time, other charters were granted (*d*). The destruction of the liberties of the city of London, attempted in the time of Charles II. by the infamous *quo warranto*, whereby the Crown seized into its hands the liberties and privileges of the City, for a pretended forfeiture by the citizens in petitioning the King for a free Parlia-

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(*c*) The literal translation of this Charter, from the original Saxon, is as follows:—

"William the King greets William the Bishop and Godfrey the "Portreve, and all the Burghers within London, French and Eng-"lish, friendly. And I make known to you that I will, that ye be "law-worthy, as ye were in the days of King Edward. And I will, "that each child be his father's heir after his father's days. And "I will not suffer that any man command you any wrong. God "keep You."

There is another Charter of the Conqueror preserved in the same box with the above. It is without date: and it does not mention *to whom* the grant is made. It is directed to the Bishop and Sweyn, the *Sheriff* of *East Saxony*, and merely states that he has granted to *his dear man or men* (friends), a certain piece of land at Gyddesdon, according to his agreement; and that he will not suffer the French or the English to hurt them in anything. Norton's Com. p. 324.

(*d*) *Chamberlayne of London's case*, 3 Leon, 264, and see Bohun Priv. Lond. 80.

ment (*e*), was prevented even before the revolution of 1688; for King James II. on the first rumour of

(*e*) The allegation in the plea, put in by the Crown, is as follows:—

"And further, That whereas a Session of Parliament was holden "by prorogation, and continued to the 10th of January, 32 Car. 2, "and then prorogued to the 20th January then next.

"The mayor, commonalty and citizens, 13th of Jan., 32 Car. 2, "in their common council assembled unlawfully, maliciously, advisedly and seditiously, and without any lawful authority, assumed "upon themselves, *ad censendum, &c., judicandum dictum Dominum "Regem, &c., prorogationem Parliamenti per Dominum Regem sic "fact.* And then and there in common council assembled, did give "their votes and order, that a certain petition under the name of the "mayor, aldermen and commons of the City of London, in common "council assembled, to the King should be exhibited, in which said "petition was contained:

"That by the prorogation the prosecution of the public justice of "the Kingdom, and the making necessary provision for the preservation of the King, and of his Protestant subjects had received interruption. And that the mayor, and commonalty and citizens in the "same common council assembled did unlawfully, maliciously, "advisedly and seditiously, and with intention that the said petition "should be dispersed amongst the King's subjects, to induce an "opinion in them, that the said King by proroguing the Parliament "had obstructed the public justice, and to incite the King's subjects to "hatred of the King's person and government, and to disturb the "peace of the Kingdom, did order that the said petition should be "printed, and the same was printed accordingly to the intent and "purpose aforesaid.

"By which the mayor, commonalty and citizens aforesaid, the "priviledge, liberty, and franchise of being a body politic and corporate did forfeit, and afterwards by the time in the information, "that liberty and franchise of being a body politic, did usurp upon "the King. *Et hoc, &c.*

"And as to the other two pleas, viz., the making and having "sheriffs and justices of the peace, the attorney general imparles to "Michaelmas Term." See Pleadings, &c., on *Quo Warranto*, London, 1690.

the Prince of Orange's preparations, sent the Lord Chancellor Jeffries to the City, and restored the former charters; and these were afterwards fully confirmed by the statute 2 W. & M. sess. 1, c. 8, which statute, after reciting the judgment in the *quo warranto*, enacts that it shall be reversed and made void, and *vacats* entered upon the Rolls.

It then enacts that the Mayor, Commonalty, and Citizens of London, do remain a body politic by the name of Mayor and Commonalty, and Citizens of the city of London, &c., without any seizure or forejudger of the said franchise, &c., upon pretence of any forfeiture or misdemeanor done, or to be done; and that they shall have and enjoy all their rights, charters, &c., which they lawfully had at the time of the recording or giving of the said judgment.

That all Charters, Letters Patent, &c., for incorporating the citizens and commonalty of the said city, or any of them, and charters, &c., concerning any of the liberties, &c., lands and tenements, &c., rights, titles or estates, made since the said judgment, by the late King Charles II., or King James II., are thereby declared void.

Also, all the officers, companies and corporations, are restored, &c., and persons admitted since the said judgment into freedoms or liveries of the said companies, according to the custom of the City, should enjoy the rights and liberties of freemen and liverymen; and this act is reputed a general and public act of Parliament.

One great distinction between the customs of the

city of London and all others is, that they are declared never to become obsolete by nonuser or abuser; and, as they are confirmed by act of Parliament, the citizens of London may prescribe against a statute which does not contain an express enactment annulling them (*e*). There is also another privilege belonging to the citizens, viz., that these customs may be and are certified and recorded by word of mouth; and it is directed that the mayor and aldermen of the city and their successors, do declare by the Recorder, whether the things under dispute be a custom or not, before any of the King's justices, without inquest by jury, even though the citizens themselves be parties in the matter at issue (*f*); and, being once recorded, they are afterwards judicially noticed (*g*).

But unless the party who desires to have a question concerning the existence of a custom of the city of London tried by certificate, surmise that when parties have been at issue concerning the existence of such a custom, it has been usual to try the issue by the certificate of the Mayor and Aldermen, the question is not to be so tried (*h*).

(*e*) 4th Charter Edw. 3; 4th Charter Hen. 4; Palmer, 542; Bohun Priv. Lond. 17, 80; 19 Hen. 6, 646; *Allen* v. *Tooley*, 2 Bulst. 188; *City of London's case*, 8 Co. 126; 2 Inst. 20, and see the *case of Quo Warrunto*, Treby's Argument, p. 30 and 31.

(*f*) Charter of Edw. 4, dated 9th Nov., A. R. 2, confirming the Ancient Customs, Norton's Comm. 433; *Crosby* v. *Hetherington*, 4 M. & G. 933.

(*g*) *Blacquiere* v. *Hawkins*, 1 Doug. 380, and see Pulling's Laws and Customs of London, 7.

(*h*) Bacon's Ab. Trial (C).

One of the most important charters is the 4th of Edw. III. (1342)(*i*); this is an *inspeximus* charter confirming all the preceding charters. It further confirms a privilege as existing by ancient custom,—that if any customs in "the said City, before that time obtained and used, were in any part hard and defective, or any things in the same City newly arising, in which no remedy had been ordained, should need amendment,—the Mayor and Aldermen, with the assent of the Commonalty, might ordain thereunto a fit remedy, as often as it should seem expedient to them, so that such ordinance should be profitable to the King and to the citizens in general, and all other liege subjects resorting to the City, and also consonant to reason and good faith." Under this charter the bye-laws of the city of London are enacted; and where the Corporation have not delegated their powers to the Legislature, as in the case of their Election Acts,—11 Geo. 1, c. 18, and 12 & 13 Vict. c. 94,—they are most extensive (*k*), and have been exercised from time to time in remodelling their institutions (*l*).

As one of the counsel in the Mayor's Court of

(*i*) This Charter is to be found in Lib. Alb., and is referred to in the act of 7 Rich. 2 (1383), in the 3rd vol. of Rolls of Parl. 16. It was pleaded in *Wagonor's case*, Coke's Reports, part 8, p. 121 b; *Robinson* v. *Watkins*, Skinner, 371, and *Rex* v. *Harrison*, 3 Burr. 1323.

(*k*) See Mildmay on City Elections, 1; 2 Rep. M. C. C. 8.

(*l*) Ord. 7 Rich. 2; 21 Rich. 2; 18 Jac. 1; 13 Ann; Viner's Ab. Bye Laws; 3 Hen. 7, c. 9; *Fazakerley* v. *Wiltshire*, 1 Str. 462; *Rex* v. *Westwood*, 4 B. & C. 781; *Clark* v. *Denton*, 1 B. & Ad. 92; Bacon's Ab. tit. Bye Laws, A.; Case of Corporation, 4 Co. 776.

many years' standing, the Author might, perhaps, with reason, be thought to lean unduly in favour of the laws which are there administered; and he, therefore, begs to refer the reader to certain extracts from the report of the Municipal Corporation Commissioners, in which all the objections which can be urged against the custom of Foreign Attachment and the mode of its administration are fully stated; and in which he thinks its advantages are clearly shewn greatly to preponderate over its defects. He may at the same time be permitted to observe, that his own experience of the proceedings taken in Foreign Attachment, induces him fully to coincide in the opinion expressed by the Commissioners,—that the alleged objections to the custom "do not appear to be so formidable as has been represented, but the advantage of a speedy and safe mode of recovering debts is obvious." Indeed the Author is satisfied, that numberless debts are recovered by this process which, but for its adoption, would inevitably be entirely lost to the creditor.

The Municipal Corporation Commissioners were appointed by a commission dated the 18th of July, 1834, "to inquire as to the existing state of the Municipal Corporations in England and Wales, and to collect information respecting the defects in their constitution;" and were further enjoined, amongst other duties, "to make inquiry also into their jurisdiction and powers, *and the administration of justice, and to inquire into the several local jurisdictions* existing within the limits of all corporate towns in England and Wales."

The commissioners upon whom the duty of making a report upon the institutions of the City of London devolved, were Sir Francis Palgrave, David Jardine, T. F. Ellis, Junr., and J. E. Drinkwater Bethune, Esqs., four gentlemen who brought to the consideration of the subject, an amount of learning and experience which must entitle their observations to the highest consideration. The remarks to which I have just alluded, are subjoined to their explanation of the custom and are as follow (*m*):

"A difference of opinion prevails amongst mer-
"cantile men, with respect to the utility of this

(*m*) In order that the general reader may clearly understand the scope and meaning of these remarks, he must be aware that in all attachments, the person whose money or goods is attached, is called the defendant, and the person in whose hands the attachment is made, is called the garnishee. And although the plaintiff in any attachment shall obtain a verdict and judgment for the monies attached in the garnishee's hands; yet the defendant in the attachment, may at any time before satisfaction acknowledged upon record, put in bail to the plaintiff's action, upon which the attachment is grounded, and thereby discharge all the proceedings against the garnishee; and although the garnishee be taken in execution upon any judgment, yet if bail shall be put in by the defendant, in manner, as aforesaid, before the money shall be paid, the garnishee will be immediately discharged. Green's Priv. Lond. 15. And after judgment obtained by the plaintiff against the garnishee, on any attachment, the plaintiff must, before execution is awarded, find sureties who must undertake for the plaintiff, if the defendant in the attachment shall within a year and a day come into Court, and disprove or avoid the debt demanded against them by the plaintiff, that then the plaintiff shall then restore to the defendant the money condemned in the garnishee's hands, or so much thereof as shall be disproved, or else that they, his sureties, will do it for him. Bohun Priv. Lond. 258.

" proceeding. On the one side it is said to be " important, in a commercial community, to be " readily able to apply the property of an absent " debtor, wherever it may be found, to the payment " of his creditor; and this, it is contended, is par- " ticularly advantageous in a city much frequented " by foreigners for the purpose of trade, who may " contract debts during their abode in England, " and then remove themselves to foreign parts, " beyond the reach of personal process. On the " other hand, it is supposed to embarrass commer- " cial operations, in consequence of the unusual " power which it places in the hands of creditors, " by enabling them suddenly to lay an embargo " upon the goods of their debtors, which cannot " be applied in discharge of any commercial en- " gagements with third persons, until the attach- " ment is removed. The apprehension of this " process is said to deter foreign merchants from " consigning cargoes to London. It does not, how- " ever, appear to be likely that the existence of " this custom should, under ordinary circumstances, " have the effect of deterring the fair merchant " from sending his goods to London, though it may " well happen that a trader, who has contracted " debts in London which he does not intend to " pay, or who suspects that claims will be set up " which he does not wish to afford the claimants " any facilities for litigating, would hesitate to send " a cargo to a port where, by means of this process, " any of his creditors there, real or pretended, " might instantly seize it. Nor can much practical

" inconvenience arise from the power of suddenly " attaching the property of debtors; for the gar- " nishee, who is in almost all cases the agent of " the defendant in some shape or other, may at " any time dissolve the attachment, by appearing " for the latter, and putting in bail to the action; " or if satisfied of the truth of the debt upon which " the attachment issues, he may pay the plaintiff's " demand, and take credit for the amount in his " account with the defendant; for a payment under " an attachment would be *pro tanto* an answer " to any demand against the garnishee by the de- " fendant. And in no case can a larger property " be attached, than the amount of the sum sworn to " by the plaintiff in his affidavit of debt. *The* " *alleged objections do not, therefore, appear to be so* " *formidable as has been represented; but the advan-* " *tage of a speedy and safe mode of recovering debts* " *is obvious.*

"There are, however, several imperfections in " this proceeding, as at present in use. In the " first place, no costs are recoverable on either side; " and therefore, where a small debt is contested, if " the plaintiff succeeds against the garnishee, his " costs may very possibly exceed the sum he can " recover; and if the garnishee has no goods of the " defendant in his hands, and succeeds in shewing " himself not to be liable to the attachment, he may incur considerable expense without the possibility ' of reimbursement. Secondly, the efficiency of " the custom is much impeded by the limited extent " of its local jurisdiction. Thus goods in a ware-

"house in Thames-street may be attached; but if "lying in a lighter on the river Thames, within a "yard of the warehouse, they are exempt. So also, "if a merchant keep his cash with a banker in the "City, it is liable to the process; but if his banker "dwell a few yards beyond the limits of the City, no "attachment can be made of his balance, unless "indeed the plaintiff should prepare himself with "process, and be fortunate enough to serve it upon "one of the partners, when accidentally within the "jurisdiction: in which case, as he is supposed to "carry with him all the debts and liabilities of the "house to which he belongs, the balance of any "customer of the firm might be attached. When "the Act of Parliament was applied for, to authorize "the construction of the London Docks, it was pro-"posed by the Corporation of London to extend the "jurisdiction of the City Courts, and consequently "the application of Foreign Attachment, to the site of "the projected Docks. But this proposal was suc-"cessfully resisted by the projectors, on the ground "that the liability to this process might deter mer-"chants, and particularly foreigners, from using the "docks, and therefore, endanger the success of the "undertaking. It should also be noticed that, in "most cases, this process terminates in merely com-"pelling bail to be given for the defendant's ap-"pearance. This arises from the circumstance that "the garnishee, by putting in bail for the defendant's "appearance, may at once dissolve the attachment. "In almost all cases the garnishee is the agent of "the defendant either as his banker, factor or

"broker, and is of course adverse to the plaintiff's "demand. He therefore satisfies himself that he "has sufficient security for the defendant's appear- "ance, and then gives bail for him (*n*), which at "once releases the defendant's property in his "hands, and leaves the plaintiff to the same security "which he would have in a common action (*o*).

"A serious objection, in principle, to the pro- "ceeding, as universally practised in London at "the present day, would seem to arise from the "opportunity which it may afford for fraudulent "collusion between the plaintiff and garnishee to "the injury of the defendant, *though it must be "stated that no mischief appears to have practically "occurred in this respect.* This circumstance is "owing to the fact that the garnishee being "usually the agent of the defendant, is almost "always more inclined to him than to the "plaintiff; and is, consequently, not likely, in "ordinary cases, to collude with the latter. This "objection, however, applies, not to the custom "itself, which is, in this respect, just and reason- "able, but to the abuse and corruption of it in "modern practice. By the letter of the custom, "as above stated, the defendant must be sought, "in the first instance, by the officer of the Court, "and if not found in the City, and if he does not

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(*n*) That is special bail as security to pay the debt demanded. Bohun Priv. Lond. 280.

(*o*) That is bailable action, this report having been written before the passing of the 1 & 2 Vict. c. 110.

"answer when openly called in Court, the first "process of attachment may issue against his goods. "Still no step can be taken towards appropriating "them, until the defendant has been solemnly "called at four several Courts, and then, and not "till then, the garnishee may be summoned. In "ancient times, therefore, when the custom was "strictly adhered to, every possible precaution was "taken to give notice to the defendant of the "intended proceeding against his property (*p*); "and unless he was actually absent from the "country (in which case he might, on his return "within a year and a day, resort for his protection "to the securities given by the plaintiff for "restoring the goods), it was scarcely possible he "should not be informed of it. But the present "practice is to give no notice of any kind to the "defendant. The summons, the return of *non est* "*inventus*, the four separate defaults on being called "in Court, are indeed entered formally upon the "record; and there is no doubt that, unless they "were so entered in every case, the judgment "against the garnishee would be erroneous;' for "the custom itself would be contrary, not only "to the common law, but to the first principles "of justice, if it sanctioned a proceeding against "a man or his property without notice. But this "principle is entirely disregarded, or is considered "a mere matter of form, and there is in practice

(*p*) See observations upon the branch of the custom, *and it be returned nihil*, post, pp. 11, 12 and 13.

"no protection whatever to the defendant against a "fraudulent collusion between the garnishee and "the plaintiff. It appears, therefore, quite within "the range of possibility that a solvent defendant "may reside next door to the garnishee with whom "his goods are deposited; that the garnishee and "plaintiff may secretly agree to an attachment for "a real or fictitious debt; that execution may "issue; and even that the year and a day may "expire, and consequently the property may be "absolutely lost to the defendant, before he has "any notice of the transaction."

With reference to the subject discussed in the latter part of the above extract, the Author may be permitted to state, that during his practice in the Mayor's Court, there has never been brought to his notice a single instance, in which the garnishee and the plaintiff have secretly agreed to an attachment for a real or fictitious debt; and that his own opinion, based upon considerable experience, is, that the time allowed by the custom for the defendant to come in and defend the action, and the sureties for restitution which must be given by the plaintiff on obtaining judgment, are amply sufficient to prevent the parties having recourse to any such artifice.

An advantage is also secured by the mode of proceeding by attachment, namely, that the question between the plaintiff and the defendant in the action is contested, the fund meanwhile being secure. In this respect the Mayor's Court provides the plaintiff with a guarantee against ultimate loss, in the event of his succeeding, and thereby supplies

a defect which is very much felt in the Courts at Westminster Hall. The power of the Mayor's Court to grant a discovery in any case pending therein, is also very beneficial to the suitor; and it is to be hoped that this power also will shortly be extended to the superior Courts.

It has been thought better not to introduce any mention of the *dies non juridici* in the Mayor's Court into the body of this work, as it is hoped that they will be speedily abolished. It was the wish of the late Recorder (the Honourable Charles Ewan Law) to relieve the Court from this inconvenience; and as the present Recorder is equally anxious to do so, and so great a change has already been effected in the practice of the Court, there can be no doubt that this further improvement will follow. At present, however, the *dies non juridici* do exist, and I have, therefore, added them in the Appendix.

The new table of costs in attachments had not been completed when this work went to press, so that the Author has not been able to insert it.

The Author cannot conclude this Introduction without acknowledging his obligations to his friends, Mr. J. A. Russell, of the Northern Circuit, for many useful suggestions; and Mr. Brandon, the Deputy Registrar of the Mayor's Court, for his kindness in furnishing him with those forms of proceeding in attachment, which he did not possess; and also those in ordinary actions, together with Mr. Brandon's own most valuable directions respecting them.

OF FOREIGN ATTACHMENT.

I. OF THE CUSTOM OF FOREIGN ATTACHMENT.

THE most important power possessed by suitors in the Mayor's and Sheriff's Courts of the city of London, consists in the process called Foreign Attachment. This is a very ancient proceeding, taking its origin from the Roman law, and now common in many states and nations; but of course subject in the mode of enforcing it, to those variations which must be necessarily incident to the practice of different Courts in different countries (*a*). There are other cities in England besides London where the custom of Foreign Attachment prevails, and there can be no doubt that in a great number of instances it is a proceeding most beneficial to creditors. Nature of.

The object of the proceeding is to enable the creditor to attach the money, debts, or goods of his and object of.

(*a*) See Adam's Roman Antiquities, 208; Story's Conflict of Laws, § 549, and the notes to that section. By the French Code de Procedure Civile, tit. 7, 557, "Tout créancier peut, en vertu de titre authentique ou privé, saisir arrêter entre les mains d'un tiers les sommes et effets appartenant à son débiteur, ou s'opposer à leur remise."

debtor in the hands of a third person, and so to deprive the owner of all controul over the subject of the attachment until he appears to answer the claim of his creditor, or until the debt is satisfied.

Court from which proceeding issues.

The Lord Mayor's Court is now alone resorted to for the purpose of attachments; inasmuch as an attachment issuing out of that Court will, unless dissolved by the defendant or the garnishee, remain in force for ever, although no proceedings be had thereon by the plaintiff (*b*).

The custom.

The custom was certified by Starkey, Recorder of London, in a particular case, to be:—"That if a "plaint be affirmed in London before, &c., against "any person, and it be returned nihil, if the plaintiff "will surmise that another person within the City is "a debtor to the defendant in any sum, he shall have "garnishment against him to warn him to come in "and answer whether he be indebted in the manner "alleged by the other; and if he comes and does not "deny the debt, it shall be attached in his hands, "and after four defaults recorded on the part of the "defendant, such person shall find new surety to the "plaintiff for the said debt; and judgment shall be "that the plaintiff shall have judgment against him, "and that he shall be quit against the other, after "execution sued out by the plaintiff" (*c*).

(*b*) See Bohun Priv. Lond. 252, 254.

(*c*) 1 Rol. Abr. *Customs of London*, K. l. 3 and 4; *Horton* v. *Beckman*, 6 T. R. 760; see *Turbill's case*, 1 Wms. Saund. 67; *Banks* v. *Self*, 5 Taunt. 234; *Crosby* v. *Hetherington*, 4 M. & G. 933; *Magrath* v. *Hardy*, 4 Bing. N. C. 782. By ancient custom, and by several charters (1 Edw. 4, and 1 Car. 1), the customs of London are to be certified by the mouth of the Recorder to the Superior Courts, and in the City Courts the

Explanation of the several branches of the custom.

It will be a convenient mode of treating the law of Foreign Attachment to take the several branches of the custom, and explain them in their order, shewing the practice observed at the present day, and citing the different authorities upon the subject.

1. *If a plaint be affirmed in London before, &c., against any person.*

Entry of action.

The commencement of the proceedings by attachment is for the creditor (the plaintiff) to enter an action (*d*) and make an affidavit of his debt, which must be filed at the office and entered on the record, such action accompanied by the affidavit being held to be the foundation of the process (*e*).

Affidavit of debt.

The affidavit, except in the cases hereinafter mentioned, must be made before the registrar or

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Recorder takes the same notice of the custom as the Judges in the Superior Courts of an act of Parliament. *Day* v. *Savadge*, Hob. 87; Bohun Priv. Lond. 64, 65. In the case of *Appleton* v. *Stoughton*, 4 Croke, 517, it was decided, that the customs of London shall be tried by the certificate of the Recorder, *ore tenus*, on a writ directed to the mayor and aldermen, and that has always been the case. Jenk. 21, 22. As to the form of the suggestion on the roll, see *Crosby* v. *Hetherington*, 4 M. & G. 948; as to the form of the writ, ib.; and the form of the certificate of the Recorder, ib. 950; and form of rule drawn up, ib. 953.

If the certificate be false, an action does not lie against the Recorder, but against the mayor and aldermen, whose certificate it is, and not the Recorder's, who acts merely as their mouthpiece. *Day* v. *Savadge*, Hob. 85, 87; Sir F. Moore, 871; *Plummer* v. *Bentham*, 1 Burr. 248. When the custom has been once certified, the Court never refers the same question a second time. *Brien* v. *Knott*, 12 Sim. 26.

(*d*) For the form, see Appendix, No. VI.

(*e*) *Higgenson, Exor.* v. *Parker, Davis, Exor. Defendant, Vaillant*, MS. Cases in M. C., 16th Feb. 1802.

his deputy, and if it be insufficient, it may be rejected; the plaintiff being at liberty nevertheless to apply to the Judge for leave to issue an attachment thereon.

Who may make, and how sworn.

It is the practice of the Court to take the affidavit of the plaintiff's clerk, attorney, or agent, but such affidavit must be positive as to the debt, though the plaintiff himself be an executor only, and had he made the affidavit, need not have sworn positively (*f*).

How made in Ireland or Scotland.

Affidavits and affirmations made before a magistrate, in Ireland or Scotland, or before a justice of the peace, in any of the counties in England or Wales, and verified by affidavit, there recognizing him to be such magistrate is sufficient, without any proof of the identity of the party who made the affidavit there or of his signature (*g*).

How made abroad.

The affidavit may also be sworn in foreign countries, before a magistrate duly authorized there to administer an oath, but it must be properly authenticated (*h*).

How authenticated when sworn abroad.

The mode of authenticating the affidavit when taken before a foreign Judge, is by some person swearing an affidavit in the Mayor's Court, to authenticate that taken before such Judge, by stating in such affidavit that he had seen the Judge (giving him his title) write, (or that he knows his handwriting), and that he verily believes the name

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(*f*) *Bayne, Exor. of Bayne* v. *Scott and Another, Colvin, Defendant, Vaillunt*, MS. cases in M. C., 26th May, 1797.

(*g*) *Bayne, Exors. of Bayne* v. *Scott and Lennox, Colvin, Defendant*, ib., 26th May, 1797. See form in Appendix, No. III.

(*h*) See *Dalmer* v. *Barnard*, 7 T. R. 251; *Omealy* v. *Newell*, 8 East, 364; *French* v. *Bellew and Cullemore*, 1 M. & S. 302.

(stating it), subscribed at the foot of the paper written, &c., to be of the proper handwriting of the said (stating name), &c. But when the affidavit is taken before an ordinary magistrate in a foreign country, it must be attested by a notary public (*i*), and the affidavit cannot be sworn before a British Consul abroad (*k*).

How intituled.

The affidavit must be intituled "in the Mayor's Court, London."

What it must contain.

The affidavit or affirmation must state the Christian and surname of the deponent or affirmant, his place of residence, and his trade, calling, or profession.

The Christian and surname of the creditor and debtor should also be stated, but the residence or profession of the debtor need not, as he is presumed to be out of the way by the practice of foreign attachment. Thenature of th e debt should be clearly set forth.

Jurat when sworn by several persons.

When the affidavit is made by several persons, the jurat must state that it was sworn or affirmed by all the deponents or affirmants.

Supplementary affidavit, when allowed.

It was held, in a case decided in the Mayor's Court, that where an affidavit or affirmation is defective in a material point, the Court will, after attachment, admit a supplementary affidavit or affirmation to be filed in aid of the former.

How sworn by assignees, executors, &c.

The assignees of a bankrupt, executors, and administrators, need only swear to their belief of the debt, "being as certain as the nature of the thing

(*i*) *Ex parte Worsley*, 2 H. Bl. 275; *Omealy* v. *Newell*, 8 East, 364.

(*k*) *Ex parte Hutchison*, 4 Bing. 606; *Leveux* v. *Berkeley*, 5 Q. B. 836; *Williams* v. *Welsh and Another*, 15 L. J., N. S. 7.

will bear;" and where an executor in an affidavit to hold to bail in the Common Pleas, stating the debt to be due "as appears by the testator's books," but omitting to add "and which the deponent believes to be true," the Court allowed the plaintiff to swear to his belief in a supplemental affidavit (*l*).

At what time formerly made.

Formerly, the affidavit was made immediately before the judgment was given for the plaintiff to have execution against the garnishee, but the practice was introduced of requiring the affidavit to be made at the commencement of the proceeding, to prevent fictitious claims being asserted, and thereby putting parties to inconvenience by attachments where the plaintiff had no claim against the defendant.

What held sufficient.

An affidavit has been held in the Mayor's Court to be sufficient, though shewing some informality. That affidavit, stating that the defendant made an agreement with the plaintiff, that the defendant had broken that agreement, and thereby 120*l.* had become due to the plaintiff. The Recorder stated that the affidavit was sufficient to convince the Court that it was not fictitious, but that there was a debt due from the defendant to the plaintiff. It being clear that there was a contract between the parties, and that it was one well known to mercantile men, namely, a charter-party (*m*).

(*l*) *Sheldon* v. *Baker*, 1 T. R. 87; *Burclay* v. *Hunt*, 4 Burr. 1992; *Tonna* v. *Edwards*, 4 Burr. 2283; *Garnham, Executrix*, v. *Hammond*, 2 B. & P. 298; *Swayne* v. *Grammond*, 4 T. R. 176; *Hobson* v. *Campbell*, 1 H. Bl. 245; *Roche* v. *Carey*, 2 Bl. 850; *Reeks* v. *Graneman*, 2 Wils. 224; *Mann* v. *Sherriff*, 2 Bos. & Pul. 355; *Bayne, Executor of Bayne* v *Scott and Another, Colvin, Deft. Vaillant*, MS. cases in M. C., 26th May, 1797.

(*m*) See this affidavit in the Appendix, No. IV., *Malladew, Plts.*,

If an affidavit be insufficient, the usual course is for the garnishee to apply to the Court to be allowed to file common bail, whereby the attachment is dissolved. Application to file common bail in dissolution of attachment.

In the case of *Wadsworth* v. *Martin, Stone and Others*, Queen of Spain, defendant, an application was made by *Randell*, on the part of the garnishees, that the defendant be allowed to file common bail in dissolution of the attachment.

Ryland, *Welsby*, and *Locke* for the plaintiff, took a preliminary objection to the application as being too late, on the ground that since notice of the rule had been given on Thursday, the 23rd of January, garnishees had pleaded on the 24th.

The Recorder (Rt. Hon. J. S. Wortley) said that the application might be made at any time before the trial was had. When made.

Randell then stated the grounds of his application.

1. There is no such person as Her Most Christian Majesty Donna Isabel, Queen of Spain (*n*); her description is Most Catholic.

2. Defendant is described as Queen of Spain.

A crowned head cannot be arrested. If not

Drew and Others, Defts., Usborn and Others, Garn. MSS. Nov. 1850; and also *Bohun*, p. 295, 20 Edw. 4, 30; *Turbill's case*, 1 Saund. 67 a; *Hatton* v. *Hermorger*, 1 Str. 641; Roll's Ab. Attachment, 554; Comyn's Dig. Att. 454; *Anon.*, 1 Vent. 236; *Harrington* v. *M'Morris*, 5 Taunt. 228; *Horton* v. *Beckman*, 6 T. R. 760; *Clerk* v. *Denton*, 1 B. & Ad. 92; *Banks* v. *Self*, 5 Taunt. 234; *McDaniel* v. *Hughes*, 3 East, 379; *Mayrath* v. *Hardy*, 4 Bing. N. C. 782; *Day* v. *Paupiere*, 18 L. J., Q. B. 184; 13 Q. B. 802.

(*n*) See the notice of motion and affidavit in the Appendix, Nos. VII. & V.

liable to arrest, then her person not liable to attachment by her goods. If the Queen is not liable to arrest in this country, then the attachment ought to be dissolved on filing common bail. He cited Ashley, page 117, to shew that bail in an attachment "is of the same nature and effect as bail upon an arrest."

3. The affidavit is ambiguous "for interest upon, and by virtue of, certain bonds or certificates, bearing date, &c., and duly made and entered into, by, or on behalf of her Majesty, the Queen Regent of Spain, aforesaid, in the name of her august daughter the said Donna Isabel Segundar, Queen of Spain." It is clear that a question might arise on the affidavit whether an indictment for perjury would lie. The bonds were never executed by the defendant, nor does it appear by the affidavit, that she has ever recognised them.

The Recorder. I think the affidavit is sufficient. 1st. There can be no ambiguity as to the person intended. 2nd. An attachment is not equivalent to an arrest, it is analogous to a distringas (*o*). 3rd. To go into the third objection would amount to a trial of the claim, and this cannot be done upon an application like the present.

Ryland applied to have the rule discharged with costs.

No costs allowed between plaintiff and garnishee.

The Recorder. Costs are never given in attachments between plaintiff and garnishee.

Rule discharged.

Montagu Chambers, Q. C., then appeared for the garnishees, who he said had received notice of trial

(*o*) And see *Day* v. *Paupiure*, 13 Q. B. 802.

which had not been countermanded, and applied to have the cause tried, or the costs of the day.

The Recorder. I cannot make any order. According to the practice of the Court, the plaintiff is not bound to try the first time the cause is put down.

What debt should be alleged in plaint

The debt alleged in the plaint should be sufficient to cover the whole claim of the plaintiff against the defendant, without reference to the sum which the plaintiff may feel justified in swearing to in the affidavit; for it should be borne in mind that judgment against the garnishee can only be for the sum sworn to in the affidavit; but the verdict against the defendant in the action may be for the whole sum mentioned in the plaint.

When the attachment may be made.

How made.

Immediately after the action is entered and the affidavit sworn, the attachment may be made, and this is done by the serjeant at mace serving the garnishee personally with notice of attachment (*p*), and to effect this the rules of the Court prescribe the following course. The plaintiff's attorney must prepare the notice of attachment, and after the same is sealed by the registrar, leave it with the serjeant at mace for service. Immediately after the serjeant at mace has served the attachment, he must make a return thereof in the registrar's book, with the garnishee's names and time of service. Care must be taken to insert the garnishee's name or names correctly in the notice, as a misnomer of the garnishee, or any one of them, if there be several, need not be pleaded, is fatal; and cannot be amended. When a misnomer of the garnishee's name is given in evidence under the general issue, the plaintiff may

Notice of attachment.

What it should contain.

Misnomer of garnishee.

(*p*) See form in Appendix, No. xxi.

shew that he is as well known by the one name as the other, for the misnoner not being pleaded he cannot reply that fact (*r*).

Four persons being named as garnishees, three of them only having the property, is a fatal misnomer of the firm, for the jury cannot separate them (*s*).

And where the property is in more persons than those named, it is equally fatal.

Of defendant.

There is no rule that plaintiffs in every case of attachment must prove positively the Christian name of the defendant. If from circumstances of other description, as in coupling them with the rest of the partners in an acknowledged firm or otherwise, there is reasonable evidence to go to the jury of identity, the garnishee will be driven to prove the misnoner (*t*).

An attachment of money belonging to A. & Co. was held bad (*u*).

Effect of service of notice of attachment.

Immediately on such service of the notice of attachment by the serjeant at mace upon the garnishee, all monies, goods, and effects, which are

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(*r*) *Davis and Others* v. *Moses Staples and Others, Ellis, Defendant, Vaillant*, MS. Cases in M. C. 15th Oct. 1794; *Kohn* v. *Charles Frederick Bremen and Another, Frantz, Defendant*, Id. 25th Nov. 1795; *Boote and Another* v *Bullfinch, Thwaites, Defendant*, Id. 8th July, 1796; *White* v. *H. I. and G. Robins Garrick, Defendant*, Id. 26th Nov. 1803.

(*s*) *Karstens* v. *G. I. and E. Wolff* and *J. Dorwell, Burchard, Defendant*, Id. 11th Oct. 1797.

(*t*) *Lubbock and Another* v. *Campbell and Another, James O'Connor and Emanuel Blake* surviving partners of *Gregory Joyes*, deceased, trading under the firm of *Patrick Joyes and Son, Defendant, Vaillant*, MS. cases in M. C., 11th Feb. 1804.

(*u*) *Hornfell v. Derrion and Another, Henry Holst, Defendant*, 22nd Oct. 1800.

then in, or which may come into his hands between the date of the service and plea pleaded, are by such services of the notice of attachment made liable to the plaintiff's demand.

Several attachments may be made on one affidavit.

If the plaintiff have reason to believe that the property thus attached, is insufficient to cover the amount of his demand, he may on one action, grounded on the same affidavit of debt, from time to time, make as many more attachments as he pleases of defendant's property in the hands of different garnishees, or of the same, till his whole demand be satisfied (*v*).

Attachment may be withdrawn.

The attachment may be withdrawn by arrangement between the parties (*w*).

Action not affected thereby.

The action is not affected by the withdrawal of the attachment, though settling the action dissolves the attachment, as it is only founded upon the action.

2. *And it be returned nihil.*

Practice as to summoning defendant and return of *nihil*.

No affidavit of debt was formerly necessary in the commencement of the proceeding. The practice was for the plaintiff simply to prefer an original bill of debt or plaint in the Mayor's Court, and by virtue of such bill, and upon the prayer of the plaintiff by his attorney, to summon the defendant by the Serjeant at Mace to answer the plaintiff's plaint in the bill specified; and if the Serjeant at Mace at the same Court, by virtue of his precept returned to such Court, that the defendant had nothing within the liberty of the City by which or whereby he could

(*v*) *Morgan and Another* v. *Kirwan and Another, White, Defendant*, MSS. cases in M. C. *Vaillant*, 29th April, 1795.

(*w*) See form in Appendix, No. XXIII.

be summoned, nor could he be found within the said liberty, and the defendant at that Court being solemnly called, made default, then the course as explained under the next head was pursued.

No summons is actually served upon the defendant, and the attachment may, as we have seen, issue immediately upon the plaint being entered, at the time the affidavit is sworn and the notice of attachment being served, the property of the defendant in the hands of the garnishee is secured to answer the plaintiff's claim.

The practice of summoning the defendant, at the commencement of the proceeding, if it ever prevailed, was, in all probability, found to interfere with the advantage intended to be given by the attachment; for the defendant, upon being summoned into the Mayor's Court, would at once have notice that an attachment might be issued against any property of his within the jurisdiction, and would forthwith take steps to place it beyond the reach of the attachment; and this he could do in the case of a debt by suing for it in one of the superior Courts, or in the case of goods by removing them. Lord Mansfield, the rest of the Court agreeing, declared that the very essence of the custom is that the defendant shall not have notice (*x*).

Although the defendant is in point of fact never summoned, still a record of the proceedings in an attachment in the Mayor's Court must contain this return of *nihil*, or it will be erroneous and void, and this is all that I collect from the cases cited in the

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(*x*) *Tamm* v. *Williams*, 3 Doug. 281.

note to *Turbill's case* (*y*), and it is expressly decided in the case of *Magrath* v. *Hardy* (*z*), that "the custom does not require that any notice should be given to the defendant in the attachment of the proceedings in the Mayor's Court."

3. "If the plaintiff *will surmise that another person within the City is a debtor to the defendant in any sum.*"

Upon the return of *nihil*, the plaintiff made an allegation of a debt owing to the defendant by a third person within the City, or of money or goods being in the hands of such third person belonging to the defendant, amounting to the debt in the plaint specified or some part thereof, and then at the petition of the plaintiff, the Court ordered one of the Serjeants at Mace to attach the debt money or goods in the hands of the third party. This surmise must, it would seem, have always been a mere formal proceeding, but it must be entered upon the record, and is very material, inasmuch as it contains the allegation "that another person within the City is a debtor to the defendant," and thereby limits the jurisdiction.

Of summoning the garnishee.

4. *He shall have garnishment against him, to warn him to come in and answer whether he be indebted in the manner alleged by the other.*

We have seen the course to be pursued up to this point, viz., first, to enter a plaint and make an affidavit of debt and file it, and then serve the notice of attachment upon the garnishee.

(*y*) 1 Saund. 67 n.; *Douglas* v. *Forrest*, 4 Bing. 701, *Best*, C. J.; *McDaniel* v. *Hughes*, 3 East, 366; and see also *Bruce* v. *Wait*, 1 M. & G. 39, per *Tindal*, C. J.

(*z*) 4 Bing. 793; and see *Harrington* v. *MacMorris*, 5 Taunt. 228, 1 Marsh, 33.

Although the attachment is thus served upon the garnishee, still no summons can issue to him until four Court days have elapsed; upon which several Court days the defendant is supposed to be called upon, and a return of *nihil* made by the Serjeant at Mace, which surmise and returns are entered upon the record (*z*): and this practice is strictly in accordance with that which has always prevailed.

Rule of Court with respect to.

The rule of the Court is, that "On the 4th, or any subsequent Court day, after the day of the attachment made, the plaintiff may summon the garnishee to appear (*a*); which summons shall contain the particulars of the goods or the amount of money the plaintiff seeks to attach the defendant by, and when sealed, it must be left with the Serjeant at Mace for service: and no attachment or summons to the garnishee can be served except by the Serjeant at Mace or his deputy; and no such summons can issue without one clear day, at least, between the day of issuing and the return day.

The garnishee may enter a note of appearance with the Registrar at any time after the attachment made (*b*). If the plaintiff do not summon the garnishee on the 4th Court day after the day of the service of the attachment, the garnishee, provided he has filed an appearance, may enter a rule

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(*z*) See the form in Appendix, No. XI. and see 1 Rol. Ab. Customs of London K. l. 3 & 4; Bohun Priv Lond. 275, and record 290, 292, 293, 294; *Hale* v. *Walker*, Tr. 1 Case B. R.; *Banks* v. *Self*, 5 Taunt. 234; *Crosby* v. *Hetherington*, 4 M. & G. 933.

(*a*) See form in Appendix, No. XXII.

(*b*) See form in Appendix, No. XV.

to prosecute, and give notice thereof to the plaintiff's attorney.

If the plaintiff do not proceed in the attachment within three days after such notice, the garnishee, upon an affidavit of service of such notice, may sign judgment for not prosecuting the same.

Course to be pursued by plaintiff.

We have before seen that an attachment in the Mayor's Court remains in force for ever where no steps are taken by any of the parties thereto. When, therefore, the plaintiff has caused his notice of attachment to be served upon the garnishee, he should well consider whether it be to his interest at once to proceed with the attachment, and in deciding upon the course which he should adopt, he should consider whether the money or goods in the hands of the garnishee is sufficient to cover his claim against the defendant; and, if not, whether the garnishee, not having pleaded, there is a probability of any more property of the defendant coming into the hands of the garnishee, always bearing in mind that any subsequent attachment by another party will override his, if judgment be obtained in it first (*c*).

Requisites of the summons.

The summons to the garnishee, where the attachment is upon goods, must, as directed by the rule of Court, contain a description of the goods, and this is in order to enable the Serjeant at Mace to identify them, upon judgment being obtained by the plaintiff. Where the garnishee will not furnish the necessary information, and it cannot be otherwise acquired, a bill of discovery may be filed against him on the equity side of the Court, in

When a bill

(*c*) See *Hornfell* v. *Derrion and Another, Holst & Co., Defendant, Vaillant*, MS. Cases in M. C., 22nd Oct. 1809.

of discovery may be filed. For what purpose.

order to obtain the requisite information and any information whatever respecting his transactions with, and the property he holds belonging to the defendant, and whether he has any or what lien upon it, which information the garnishee is obliged to give on oath in his answer.

Costs in.

Although the general rule is that no costs are allowed in attachments, still the whole costs of both sides of a bill of discovery must be paid by the party filing it; and now as far as concerns an inquiry as to the lien of the garnishee, since parties to the suit are made competent witnesses, the same result may be obtained by the examination of the garnishee at the trial (*d*).

Summons, how served.

The service of the summons is effected by the Serjeant at Mace personally delivering the same to the garnishee (*e*).

Of the course open to the garnishee.

5. And if he comes and does not deny the debt, it shall be attached in his hands.

There are three courses open to the garnishee—either not to appear; to appear, but not to plead; or to appear, and plead.

When he does not appear.

When the plaintiff summons the garnishee in the manner and form already treated of under the last head, and he does not appear on the return of such summons, the plaintiff will be entitled to judgment by default, but the garnishee has till two o'clock on the return day of the summons to appear, but no summons to issue without one clear

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(*d*) This proceeding by bill of discovery is much resorted to, and is found extremely beneficial in discovering property in the hands of the garnishee, and the circumstances attending the dealings between the garnishee and defendant.

(*e*) See form of summons in Appendix, No. XXII.

day at least between the day of issuing and the return day.

If the garnishee should appear, the plaintiff's attorney must deliver to the garnishee's attorney a copy of the record in the usual form within two days after the garnishee's appearance, if not, the garnishee may, as in the case of the plaintiff not summoning him on the fourth Court day as before stated, enter a rule to prosecute with the Registrar. When he appears.

One of the rules directs that all formal proceedings as to pleadings, &c., are to be the same as in ordinary actions, except when the peculiar proceedings of attachment require a departure from the ordinary forms. Therefore where the garnishee appears, but neglects to plead the rules prescribed in ordinary actions, will apply. The plaintiff, according to those rules, cannot take any proceedings to compel the garnishee to plead till after three days inclusive from the delivery of the record to the garnishee's attorney; and the plaintiff must then, before he can sign judgment for want of a plea, demand such plea of the garnishee in writing, and if he do not plead within four days after such demand of a plea, the plaintiff may sign judgment for want of a plea (*f*). Formal proceedings, rule as to. Where the garnishee appears, but does not plead.

Upon judgment being signed, (*g*) the plaintiff having given his pledges (for which see *post*), is at liberty to issue his writ of execution, filing a *precipe* of such writ, and getting the same sealed by the registrar, such writ to be left with the Serjeant at Judgment and execution.

(*f*) See the rules in ordinary actions in the Appendix.

(*g*) The course observed in signing judgment is the same as in ordinary actions, for which see Appendix.

Mace for the purpose of being executed; and upon the receipt of the produce of the writ the Serjeant at Mace must pay the amount into Court. But the garnishee may immediately, upon the delivery of the copy of the record, plead to the attachment.

When the garnishee may plead.

Where the garnishee leads.

Where the garnishee pleads, and a verdict is found for the plaintiff, then, as in the two former instances, the money is "attached in his hands," to be obtained as we have seen in cases where judgment is suffered by default.

The most advisable course for a garnishee who does not wish to resist the claim of the plaintiff, but in the terms of the custom as returned, "does not deny the debt," is to plead and force the plaintiff to prove his case and then proceed to execution against him, for otherwise he may not be discharged from his debt to the defendant (*h*).

Four defaults when entered on the record.

6. *And after four defaults recorded on the part of the defendant.*

The four defaults are those abovementioned, and which are recorded immediately preceding the record of the issuing of the "*scire facias*" or summons (*i*) to the garnishee, which, as we have seen, cannot issue till the fourth Court day after the issuing of the attachment.

7. *Such person shall find new surety to the plaintiff for the said debt; and judgment shall be, that the plaintiff shall have judgment against him, and that he shall be quit against the other after execution sued out by the plaintiff.*

(*h*) *Magrath* v. *Hardy*, 4 Bing. 782.

(*i*) See 1 Rol. Abr. Customs of London, L. l. 2, Bohun, 294, and form in Appendix, No. XI.; also *Banks* v. *Self*, 5 Taunt. 238.

We have already considered the mode by which the judgment is obtained, and now we will under this head consider more particularly the judgment itself. Judgment, what.

The judgment is that the plaintiff have execution of the sum attached, and that he shall retain and hold the same in full satisfaction of a like sum in the plaint mentioned.

But before execution is awarded, the plaintiff must find sureties who must undertake for the plaintiff, if the defendant in the attachment shall within a year and a day come into Court, and disprove or avoid the debt demanded against him by the plaintiff, that then the plaintiff shall restore to the defendant the money condemned in the garnishee's hands, or so much thereof as shall be disproved, or else that they, his sureties, will do it for him; and then execution will be granted against the garnishee for the monies found in his hands which the serjeant-at-mace executes, and the plaintiff receives the proceeds upon signing satisfaction upon the record. Pledges to restore to be given by plaintiff before execution issues. Execution.

The following are the rules of the Court with respect to pledges to restore.

At any time after signing final judgment, the plaintiff shall, if required, give two days' notice to the registrar of the names, residence, and occupation of the persons he proposes as pledges to restore: and, if upon inquiry by the registrar they are found of sufficient responsibility for the amount recovered under the judgment, the registrar shall take the recognizance of such pledges to be taken upon the record, and the registrar shall thereupon, upon Notice to registrar respecting pledges to restore. When pledges sufficient.

satisfaction being signed upon the record, pay over the proceeds to the plaintiff's attorney.

What persons allowed as.

All persons allowable as bail to dissolve an attachment shall also be allowable as pledges to restore (*j*).

Where registrar accepts insufficient pledges.

In any case if the registrar at the time of taking the pledges to restore, do not make proper inquiries as to their sufficiency, and accept pledges insufficient at the time of their being taken, he shall on petition to the Court, be compellable to recompense the party for such insufficiency if the Court shall so see fit.

Where registrar refuses to accept.

In case the registrar refuses to accept the pledges to restore proposed by the plaintiff, the pledges may justify in Court.

When garnishee may plead the attachment.

When an action is commenced by the defendant in the attachment against the garnishee, it is a sufficient answer by the garnishee to such action, to plead and prove a recovery by foreign attachment at the suit of a creditor of the plaintiff (the defendant in the attachment), and that such creditor had execution of the sum recovered according to the custom of London, and that such execution was executed (*k*), of the monies or goods in the hands of the garnishee.

(*j*) See the rules, *post*, as to the requisites of bail to dissolve an attachment under the head "Attachment how dissolved or defeated."

(*k*) 1 Roll. Abr. Customs of London, L. l. 1; Bohun's Priv. Lond. 280; *Wetter* v. *Rucker*, 1 Brod. & Bing. 491; *Magrath* v. *Hardy*, 4 Bing. 782; *Morris* v. *Ludlam*, 2 H. Bl. 362; *Lord Barrymore* v. *Taylor*, 1 Esp. 327; *Tamm* v. *Williams*, 2 Chit. 438; *Crosby* v. *Hetherington*, 4 M. & G. 933; *Webb* v. *Hurrell*, 4 C. B. 287; *Huxham* v. *Smith*, 2 Camp.

But when no execution is sued against the garnishee, the plaintiff may proceed to judgment and execution against the defendant, and in like manner the defendant may sue the garnishee for his debt, notwithstanding the unexecuted judgment. Certified in writing by *Brook*, Recorder, in the case of *Robertson* v. *Norrey, King at Arms*, 7 Ed. 6, c. 2 (*l*).

Where execution not executed, no bar to plaintiff or defendant.

II. OF THE LORD MAYOR'S COURT.

HAVING thus treated of the different branches of the custom of foreign attachment and the mode of enforcing it, I now propose to consider, very shortly, some particulars as to the powers and jurisdiction of the Lord Mayor's Court (*a*).

The proper title of the Court is "The Court of "our Sovereign Lady the Queen, holden before the "Mayor and Aldermen of the City of London in "the outer Chamber of the Guildhall."

Title of the Lord Mayor's Court.

It is a Court of Record existing from time immemorial, and having original civil jurisdiction, both at common law and in equity (*b*), besides its peculiar

A Court of Record.

19; *Nonell* v. *Hullett*, 4 B. & Ald. 646; *MacDaniell* v. *Hughes*, 3 East, 367; *Bruce* v. *Wait*, 1 M. & G. 1.

(*l*) 2 Dyer, 82, l. 72; and see *Wood* v. *Thompson*, 5 Taunt. 35; *Bromley* v. *Peck*, Id. 852; *Smith* v. *Ogle*, 6 Taunt. 70; *Chamberlayne* v. *Green*, 9 M. & W. 790.

(*a*) See Bohun Priv. Lond. 250, 291; Lex. Lond. 1; *Reg.* v. *The Mayor of London*, 13 Q. B. 1; *Mayor of London* v. *The Queen*, Id. 31.

(*b*) Report of M. C. C. 123; Bohun Priv. Lond. 250; Lex Lond. 1, 7.

Jurisdiction of the Court.

jurisdiction in foreign attachment. The Court is held by custom, and all manner of actions may be entered and tried in it by a jury for any matters whatsoever arising within the city or liberties of London, to any value whatsoever, as for debt at the plaintiff's suit; debt at the chamberlain's suit; debt upon a penal statute, trespass, account, covenant, &c. (*c*).

Thus the Court has not only a concurrent authority with the Courts of common law in Westminster Hall over all actions of a civil nature, arising out of the common or general law of the land, within its jurisdiction, but it holds pleas in a variety of causes of very considerable importance, arising out of the City customs, in exclusion of those Courts. It also holds pleas of penal actions, arising out of Acts of Common Council, whereof the Courts of Westminster cannot take cognizance.

It holds pleas between subject and subject of all personal actions for redress of civil injuries, arising or committed within the City or liberties, whether founded upon contract or tort, let the subject-matter be of what amount in value, or to what extent it may; as action of debt, detinue, covenant, assumpsit, and actions of trespass (*vi et armis*), as assault, battery, false imprisonment; also actions of trespass on the case, as slander, malicious prosecution; also trover, or case considered with reference to personal property, and trespass on the case properly so called, which includes injuries to real property. It also adjudicates between master and apprentice, and hears and determines questions of

(*c*) Bohun Priv. Lond. 251.

disfranchisement. On the equity side it entertains bills for discovery, relief, or account; also suits for the return of apprentice premiums, and distribution of intestate estates, &c. All of which powers it exercises by a primary original authority inherent in it, and without any writ or mandate from a Superior Court.

The jurisdiction of the Court extending only to the city of London and its liberties, it is always an important question whether the subject-matter which raises the gist of the action be within the limits of that jurisdiction.

It is not necessarily to be inferred that the whole grievance which the action is instituted to redress, should accrue within the jurisdiction (*d*).

The case of *Stannian* v. *Davis* (*e*) was an action in an inferior Court against an innkeeper for negligently keeping the plaintiff's horse, and suffering him to be taken out of defendant's stable and immoderately ridden. It was there held, that it need not appear that the riding the horse was within the jurisdiction, it being a subsequent wrong and a measure only of damages.

In the case of *Huxham* v. *Smith* (*f*), where a merchant abroad ordered goods of a shopkeeper residing within the city of London to be put on board a ship lying beyond the limits of the City,

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(*d*) *Stannian* v. *Davis*, 11 Mod. 7; 1 Salk. 404.

(*e*) Ld. Raym. 795; *Heeley* v. *Ward*, 1 Vent.; 2 Cro. Car. 571; *Waldock* v. *Cooper*, 2 Wils. 16; *Peacock* v. *Bell*, 1 Saund. 73; *Trevor* v. *Wall*, 1 T. R. 152.

(*f*) 2 Camp. 21, and see *Rees* v. *Smith*, 2 Stark. 33; *Dutens* v. *Robson*, 1 H. Bl. 100; *Carslake* v. *Mapledorum*, 2 T. R. 473; Anon. 10 Mod. 71.

and the shopkeeper sent them from his shop to be shipped in pursuance of the order, it was held that there was a delivery as soon as the goods were put in a course of conveyance, and that the price might be sued for in the Mayor's Court as a debt arising within the City.

And so a promise to pay an account within the jurisdiction, an order given and delivery elsewhere, or delivery made therein and the order given elsewhere, are sufficient to give the Court jurisdiction (*g*).

Judge of the Court.

The Recorder of London for the time being is the sole acting Judge of the Court, but the Lord Mayor and Aldermen may sit as Judges with him if they please, they being the legal Judges, and all bills and petitions are formally addressed to them. During the illness or necessary absence of the Recorder, a deputy Judge may be appointed by the Court of Aldermen, and the Lord Mayor has sat judicially, taking however to himself an assessor in the person of the Common Serjeant. By ancient entries in the Corporation books, it appears that the town clerk, if a barrister, may preside by virtue of his office, and without any express appointment. No instance has however occurred in modern times in which the town clerk has acted in this capacity.

Registrar.

It would seem that the office of town clerk is inconsistent with his presiding as Judge of the Mayor's Court, inasmuch as by virtue of his office, he is the registrar of the Court, and in the absence of his deputy, by whom the duties are performed, he would attend the Court as registrar.

(*g*) *Emery* v. *Bartlett*, 2 Ld. Raym. 1555, and see *Kemp* v. *Clark*, 12 Q. B. 647.

The various acts for the improvement of the city of London direct, almost without exception, that the compensation cases shall be tried in the Mayor's Court, and that the costs of the claimant shall be taxed by the registrar of the Court (*h*).

Common pleaders.

There are now three Common Pleaders who are elected to the office by the Court of Common Council, and take an oath of office upon such election. Their seniority as counsel in the Mayor's Court and other Courts of the City, is determined not by their standing at the Bar, but by the date of their appointment (*i*).

Attornies.

The practice of the Court for many years past has been confined to four Attornies, who conducted the whole proceedings in it. The Court of Aldermen have, however, now directed that all attornies and solicitors of the superior Courts at Westminster may be admitted practitioners in the Court.

Juries.

The citizens intended to serve as jurymen for the year ensuing, are returned by the Aldermen of the several wards at the wardmote inquest every Christmas by indenture under seal; and the wards are

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(*h*) In the case of *Bentley* v. *The Corporation of London*, the present Recorder held, that the Court had no authority to review the taxation of the registrar (the town clerk), who was appointed by the 9 & 10 Vict. c. 280, ("An Act for widening and improving Cannon-street, &c."), taxing officer, and he came to this decision upon the authority of *Ross* v. *The York, Newcastle and Berwick Railway Company*, 18 L. J., K. B., 409.

(*i*) There were formerly four Common Pleaders, but the office of one of them was not filled up after the retirement of Mr. Laurie, in the year 1850. See Report of M. C. C. 45, 131, as to the mode in which the office was formerly obtained, and the changes effected by the Corporation.

arranged into twelve divisions, the jurymen in each separate division serving for one month of the year.

Special. In cases of importance the Court will, on motion, award a special jury of merchants to try the issue.

Officers. The Serjeants at Mace are the officers to the Court, for serving and executing its process, and performing various other duties incidental to their office. One attends regularly at the Lord Mayor's Court Office.

Custody of prisoners. The Sheriffs of London, although they do not execute the process of the Court, have the custody of its prisoners; hence, the reason of directing the *habeas corpus* (which removes the body as well as the cause), to the Mayor, Aldermen and Sheriffs, although the latter are not Judges of the Court (*k*).

III. WHEN FOREIGN ATTACHMENT MAY BE RESORTED TO.

HAVING considered the nature of the custom of Foreign Attachment and the jurisdiction and officers of the Lord Mayor's Court, we will next enter upon the important question of, when the proceeding of foreign attachment may be resorted to in the Mayor's Court, and then the means by which an attachment may be dissolved or defeated.

The defendant's claim against the garnishee. First, then, an attachment will only lie where the defendant could maintain an action of debt or detinue in the Mayor's Court, or an action of assumpsit, trover, debt, or detinue in the superior

(*k*) Ashley's Doctrine and Practice of Attachment, page 18.

Courts against the garnishee for the recovery of the debt or goods sought to be attached. In fact, the plaintiff, at the trial of the attachment, has to prove the case of the defendant against the garnishee, the issue being whether the garnishee at the time of making the attachment, or at any time since before plea pleaded, owed to or detained from, or yet has, owes to, or detains from the defendant in the attachment the money or goods attached, or any part thereof in manner and form as the plaintiff by his attachment has supposed (*l*).

Of what an attachment may be made.

An attachment may be made of money, debts, jewels, chests and boxes locked, and the contents, or any goods and chattels; and an attachment may be made for goods or money or both, at the same charge, and all upon one attachment. Money due upon bond, bills of exchange, or a goldsmith's note may be attached. And the money or goods of any trading company may be attached so as the debt demanded be upon bond under their common seal (*m*).

Nature of debt.

The following case explains the nature of the debt on which to ground an attachment.

If A. sell certain stockings to B. on a contract by which B. is to give 10*l.* to A., and that if he again sell the stockings before August that he will pay 2*d.* more for each pair of stockings; the 10*l.* is attachable by a foreign attachment, because an action of debt lies for this; but the 2*d.* for each pair of stockings is not attachable, because this only rests in

(*l*) See form of plea in the Appendix, No. XII.

(*m*) 1 Rol. Abr. 551, C. 50; Bohun Priv. Lond. 261; Green's Priv. 25; Comyn's Digest Attachment, C.; *Anon.* 2 Shower, 372, No. 355.

damages to be recovered by an action on the case, and not by action of debt, for it is only made payable upon a possibility, p. 11, Car. B. R., between *Read and Hawkins, per Cur.*, upon a demurrer where an action on the case was brought for the 10*l.* only, and the foreign attachment pleaded in bar; but the judgment was given against the defendant for mispleader of the foreign attachment. *Intratur. H.* 11, *Car. Rot.* 78. But *per Curiam*, this would be a good bar if it had been well pleaded. 1 *Rol. Abr. Customs of London, E.* l. 6, page 552.

Debt on bond, bill or note not due may be attached,

Although no action can be entered by the obligee for a debt upon a bond, bill, or note, the day of payment of which is not arrived (*n*), still a creditor of the obligee or party to whom a bill or note has been given may attach the debt upon the bond, bill, or note in the hands of the obligor, acceptor, or maker, and the garnishee, that is, the debtor upon whom the attachment is served, if he appear, must plead, that it is true he hath so much money in his hands, but that the same is not due or payable to the defendant till a certain day to come. The plaintiff would thereupon have judgment against the garnishee for the money attached, but execution cannot be awarded for the money until it become due according to the time mentioned in the plea (*o*).

and garnishee, if he appear, must plead.

(*n*) 1 Rol. Abr. 553; Comyn's Digest, Foreign Attachment, D.; *Dalton* v. *Selby*, 3 Leon, 236.

(*o*) See Bohun Priv. Lond. 261; 1 Rol. Abr. 553. The case of *Robbins* v. *Standard*, 1 Sid. 327. Debt upon obligation of 100*l.* the defendant demands oyer of the condition, and it was to pay 50*l.* before such a day, and he pleads the custom of London of Foreign Attachments, *scil.*:—that if one owes money to me, who has a debt payable to him by any one in London, I can

Before forfeiture of a bond, the attachment must be for the debt owing after forfeiture, but the judgment is only for the penalty (*p*). And likewise, a simple contract debt not due may be attached, and the judgment is not that the debt attached shall be paid immediately, but that it shall be paid when it becomes due (*q*). It is said in *Roll's Abridgement* above cited, that the Court in the case of *Dalton* v. *Selby*, said it was not laudable nor to be allowed to attach a debt before it was due.

Debt on simple contract not due.

It has been said that debts arising out of the jurisdiction are not attachable, and that a prohibition

Simple contract debt arising out of

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attach so much thereof as is due to me, and that before the day of payment of the obligation a creditor of the plaintiff's *scilicet* such a one, attached the said 50*l.* and gave security in the Court; there according to such custom to repay the debt, if it were disproved, within a year and a day, &c. And that on such day, which was after the day in the obligation, he paid the 50*l.* to the said creditor, under a *scire facias* against him, according to the custom. And to that plea the plaintiff demurs, and shews for cause first, that a custom to attach a debt before it is due is not good, but after several arguments the Court were of opinion that the custom is good; for though he can attach it as a debt, yet he cannot levy it until after the time for payment of the obligation, and so the custom is laid. Second: It was said for the plaintiff that though it be a good bar, yet it is no bar except for 50*l.*, since by the plea, it appears that it was not paid till after the day, and so the obligation is forfeited. But *per cur.*, it is a good bar for all, because by the attachment which was before the day of payment, this becomes a debt to the creditor *scilicet* all that was due, and the obligee cannot afterwards take any advantage of the obligation. But if this had been an attachment of 20*l.*; *semble*, that the defendant should plead this record of the attachment in London in bar, *pro tanto*. And *per cur.*, judgment was given for the defendant, because the plea was good.

(*p*) *Ingram* v. *Bernard*, 1 Ld. Raym. 636; Cro. Eliz. 101; *Robins* v. *Stondard*, 1 Sid. 327.

(*q*) 1 Rol. Abr. Customs of London, G. L. 2 & 3.

jurisdiction when attachable,

will lie. It is, however, the constant practice of the Court to attach indiscriminately debts of this description, and it is quite clear that with regard to simple contract debts, as they follow the person, they may be attached by serving the debtor with an attachment within the City (*r*). And this is the course ordinarily pursued with respect to bankers and others carrying on business out of the City. If an attachment be served upon any one of the partners of a firm, while he is within the City, it is sufficient, although they carry on their business out of the City. With respect to goods, they must be within the jurisdiction or they cannot be attached in the hands of the garnishee (*s*).

but goods cannot be attached out of the jurisdiction.

Goods or money coming to the hands of the garnishee between attachment and plea.

Goods or money coming to the hands of the garnishee belonging to the defendant, or the garnishee becoming indebted to the defendant between the attachment and plea, such goods, money and debts may be recovered in the attachment. The general issue upon all attachments being, whether the garnishee at the time of the attachment made, or at any time after (that is before plea pleaded) had any moneys or goods of the defendant in his hands (*t*). And so it was held in the case of——— v. *Noquiere & Williams*, garnishees ——— defendant (*u*) that money of the defendant transmitted to

(*r*) And see *Self* v. *Kennicot*, Shower, 650, No. 460; *Andrews* v. *Clarke*, Carth. 25, 26; *Anon.* 1 Vent. 236; 1 Rol. Abr. Customs of London, K. L. 3; *Harrington* v. *MacMorris*, 5 Taunt. 228.

(*s*) See Bohun Priv. Lond. 273, 274, 275; *Hern* v. *Stubbs*, Godb. 400; Latch. 208.

(*t*) Bohun Priv. Lond. 255.

(*u*) *Vaillant*, MS. Cases, decided in M. C., 1793; and see *Williams* v. *Everett*, 14 East, 582; *Lilly* v. *Hays*, 5 A. & E. 548; *Brind* v. *Hampshire*, 1 M. & W. 365.

the garnishee after the attachment and before plea pleaded though for a specific purpose was subject to the attachment. And where the defendant abroad sent over a power of attorney to execute a deed of composition for a debt due to him from the garnishees but before the deed was signed this debt was attached in their hands by a creditor of the defendant, a subsequent execution of this power was held not to defeat the attachment by relation back to the date of the power of attorney, for it was revocable till performed, and the attachment equivalent to an express revocation by the defendant, and it was also held that the doctrine of relation can only apply to defeat an attachment where the instrument which claims to change the property is irrevocable and a Court of Equity would compel the performance of the contract raised by it (*x*).

Unliquidated accounts which are capable of being ascertained may be attached (*y*). Unliquidated accounts which can be ascertained.

Goods or money due to a testator or intestate at the time of his death may be attached in the hands of the executor or administrator (*z*). When goods or money may be attached in hands of executors.

A debt may be attached in the hands of an Attorney of the Superior Courts who shall not have his privilege against foreign attachment (*a*). Attorney not privileged from attachment.

(*x*) *Page* v. *Donaldson and Another, Oswald, Defendant, Vaillant*, MS. Cases in Mayor's Court, 8th March, 1805, and see Story's Conflict of Laws, § 398, 400.

(*y*) *Bailey* v. *Modigliani and Co., Bartolli, Defendant, Vaillant*, MS. Cases, M. C., 5th Dec., 1792.

(*z*) 1 Rol. 554, L. 20; Bohun Priv. Lond. 266, and see the case of *Spink* v. *Tenant Calthorp*, 27.

(*a*) *Turbill's case*, 1 Sid. 362, and 1 Saund. 67, overruling

Part of a debt may be attached.

Part of a debt may be attached. This means nothing more than that the debt due by the defendant to the plaintiff need not be to the amount of the debt due from the garnishee to the defendant (*b*).

Whether a carrier is privileged.

Goods in the hands of a carrier, may, it would seem, under ordinary circumstances be attached, as the case cited in *Comyn's Digest* (*c*), to the contrary does not appear to bear out that view. That case is as follows:

Edwards, of London, was indebted unto one A. of the same city, and Edwards delivered goods to one Tedbury, carrier of Exeter, who went to him to carry for him certain wares, to be carried to Exeter, to certain tradesmen there, the said goods to be delivered to them, &c. And so the said goods, wares, and merchandise, being in the possession of the defendant Tedbury, to be carried to Exeter, the said A. caused them to be attached in the hands of the said carrier, for the debt of the said Edwards. *The said carrier being then privileged in the Common Pleas, by reason of an action there depending.* And by the clear opinion of the whole Court, the said attachment ought to be dissolved: for the carrier for the reason aforesaid is privileged in his person, and his goods, and not only in his own goods whereof the property belongs to him, but also

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Lodge's case, 2 Leon, 156, and several others; and see Bohun Priv. Lond. 268, and in *Ridge* v. *Hardcastle*, 8 T. R. 417; the authority of *Turbill's case*, 1 Saund., was expressly recognised and adopted.

(*b*) *Anon.* Godb. 195, No. 282.

(*c*) Comyn's Digest Attachment, D.; *Edwards* v. *Tedburies*, 1 Leon, 189.

in such goods in his possession for which he is answerable to others, &c. And so it was adjudged (*d*). It seems that the action pending in the Common Pleas was the ground of the privilege, and not the mere fact of the party being a carrier.

Money entrusted to garnishee to keep attachable.

A man may have money in his hands which is attachable, though it be not debt; as if he has money to keep, or if he finds the money of the debtor (*e*).

Money levied under an execution and paid over to defendant's attorney, may be attached,

Money in the hands of the sheriff, as will be seen, cannot be attached, being in *custodiâ legis*, but where money is levied under an execution on a judgment in the Queen's Bench and paid over to the plaintiff's attorney there it is no longer protected from attachment, as the cause in the superior Court is at an end (*f*). The garnishee (the attorney) would be entitled to his lien on the money for the amount of his bill of costs (*g*).

but the attorney would be entitled to his lien.

Deed of assignment for benefit of creditors. Party not coming in may attach debt due to defendant.

Though, generally speaking, if the defendant could not maintain an action against the garnishee for the property attached, the plaintiff in attachment cannot have a verdict; still there are exceptions, as in the case of a voluntary assignment for the benefit of all creditors, any one of them not coming in as a party to the deed of assignment may attach the distribution (*h*).

Bankruptcy of one de-

The bankruptcy of one of the defendants, founded

(*d*) And see *Verrall* v. *Robinson*, 2 C. M. & R. 495, *custodiâ legis*.

(*e*) *Tross* v. *Michell*, Cro. Eliz. 172; *Michill* v. *Hores*, 1 Leon, 321.

(*f*) *Lee* v. *Palmer, Jun., Poe, Defendant, Vaillant*, MS. Cases in M. C., 12th Feb. 1795. (*g*) Id.

(*h*) *Phene* v. *Watkins, Whitmore, Defendant, Vaillant*, MS. Cases in M. C., 29th April, 1795.

fendant when it does not defeat attachment.

upon an act of bankruptcy committed before the attachment, was held not to defeat the attachment upon their joint property made before the commission issued (*i*).

Whether a debt can be attached in the hands of the plaintiff.

Whether a debt can be attached in the hands of the plaintiff himself is doubtful (*j*). The custom, as certified by *Starkey*, was in a case where the plaintiff sought to attach a debt in the hands of a third person, and therefore the custom was certified to a sufficient extent to meet that case, to this effect: "if the plaintiff will surmise that *another* "person," &c.; but in the case of *Hernie* v. *Stubbs* (*k*), the custom was stated to be, after the summons and return, that "if he (the defendant) "be solemnly called at the next Court and makes "default, that then if he (the plaintiff) can shew "that the defendant hath goods in the hands of "*one* within the liberty of the City, that the said "goods shall be attached." The word *one* clearly does not restrict the making the attachment upon goods, monies, or debts, in the hands of a person other than the plaintiff himself. The custom has been certified in several cases, but the certificate has only been made sufficient to meet each particular case, and there is little doubt that the custom

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(*i*) *Goodair* v. *Cohen and Another, I. and D. Valery, Defendants, Vaillant*, MS. Cases in M. C., 7th May, 1805. And *Bristow* v. *Potts, James and John Fletcher, Defendants.* Id.

(*j*) *Kerry* v. *Bower*, 1 Cro. Eliz. 186; 1 Rol. Abr. 552, 554, Bohun Priv. Lond. 253; Com. Dig. Attach. C.; *Harwood* v. *Lee*, 2 Dyer, 196 a; *Pro Hope* v. *Holman*, 1 Brownl. & Gold. 60; *contra Nonell* v. *Hullett*, 4 B. & Ald. 646, dub.

(*k*) Godbolt, 400.

is more full than has yet been certified, it is contained in the *Liber Albus*, which is in the Town Clerk's office. In the case of *Nonell* v. *Hullett* (*l*), whether a custom for a party to attach money in the hands of himself and partner could be supported, was left doubtful; but the Court held that the custom, as pleaded, that the plaintiff might attach money in the hands of "other person or persons," was not supported by shewing that he had attached money in the hands of himself and his partner; and by *Abbott*, C. J.—"My present "judgment will not interfere, in any respect, with "the 'customs of the city of London.' All that I "say is, that the facts disclosed in this plea, do not "bring the defendants within the custom as "pleaded."

Property belonging to a corporation liable.

Property belonging to, or debts due to, a corporation may be attached, and also property may be attached in the possession of a corporation, unless specially exempt by act of Parliament (*m*).

Attachment will not lie for a debt in equity merely.

In accordance with the above observations at the commencement of this Chapter respecting the cause of action which must exist between the defendant and garnishee (*n*), an attachment cannot be grounded upon a debt in equity; as, for instance, a legacy which is only recoverable in the spiritual Court, or in a Court of equity, nor indeed any trust

(*l*) 4 B. & Ald. 646.

(*m*) 9 & 10 Wm. 3, c. 44, s. 74, and see *Wolf* v. *City Steam Boat Company*, 7 C. B. 103, and the case of the *Hamburgh Co.*, 1 Mod. 212.

(*n*) 1 Rol. Abr. 551, Tit. Customs de Lond. (E) pl. 2; *Wood* v. *Smith*, Noy. 115; *Chamberlain* v. *Chamberlain*, Chancery Cases, 257: Com. Dig. Att. D.

property, which can only be recovered by proceedings in equity.

Effect of bankruptcy.

Dividends due to a creditor from the assignees under a commission of bankruptcy cannot be attached, and an adjudication of bankruptcy before judgment in the attachment vests the property in the assignees, and defeats the attachment (*o*).

In Scotland.

And if, pending an attachment, the defendant become bankrupt in Scotland and before judgment here, the Court of Session in Scotland make their order of adjudication, it vests the property in the trustees immediately, and defeats the attachment which is but an incipient lien (*p*).

In a foreign country.

With regard to a bankruptcy of the defendant in a foreign country, the Courts in this country will give effect to the claim of foreign assignees, when the laws of the country are proved, in the recovery of personal property, and will prevent a creditor here obtaining an exclusive satisfaction out of personal property in this country. Upon this principle, an attachment of bankrupt's property after a proceeding in a foreign country, which is equivalent to an adjudication under the English Bankrupt Laws, is invalid; but where the attachment is already made, such a proceeding in a foreign country will not defeat it (*q*). Mr. Justice *Story*, in his most valuable Commentaries on the Conflict

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(*o*) *Sill and Others* v. *Worswick*, 1 H. Bl. 665; *Phillips* v. *Hunter*, in error, 2 H. Bl. 403; *Hunter* v. *Potts*, 4 T. R. 182, *vide* 12 & 13 Vict. c. 106, s. 141.

(*p*) *Wylie* v. *Anderson and Another*, *Ramsey*, *Defendant*, MSS. C. in M. C., *Vaillant*, 5th April, 1797, and see *Selkreg* v. *Davis*, 2 Rose Bank. Cases, 291, 314; Story's Conf. Laws, 408.

(*q*) *Cleve* v. *Mills*, Cooke's Bankrupt Laws, 370; *Richards*

of Laws, thus states the result of all the authorities :—

"This is now, accordingly, the settled law of "England, in which the following propositions are "firmly established: first, that an assignment under "the bankrupt law of a foreign country, passes all "the personal property of the bankrupt locally "situate, and debts owing in England; secondly, "that an attachment of such property by an English "creditor after such bankruptcy, with or without "notice to him, is invalid to overreach the assign-"ment; thirdly, that in England the same doctrine "holds under assignment, by her own bankrupt "laws, as to personal property and debts ofthe "bankrupt in foreign countries; fourthly, that upon "principle, all attachments made by foreign "creditors, after such assignment in a foreign "country, ought to be held invalid; fifthly, that at "all events a British creditor will not be permitted "to hold the property acquired by a judgment "under any attachment made in a foreign country "after such assignment; and sixthly, that a foreign "creditor not subjected to British laws, will be per-"mitted to retain any such property acquired under "any such judgment, if the local laws (however "incorrectly upon principle) confer on him an ab-"solute title" (*r*).

Provisions and effect of Bankrupt Act.

If the defendant be adjudged bankrupt pending the attachment as we have seen, the attachment is

and Others v. *Hudson and Others*, cited in argument in *Hunter* v. *Potts*, 4 T. R., B. R. 187, and *Waring* v. *Knight*, Cooke's Bankrupt Laws, 372; *Sill* v. *Worswick*, 1 H. Bl. 672, 692, and *Solomons* v. *Ross*, Id. 131, and *Tollett* v. *Deponthieu*, Id. 132.

(*r*) Story's Conf. Laws, § 409.

virtually dissolved. And by the Bankrupt Act no creditor having security for his debt or having made any attachment in London, by virtue of the custom of the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied by seizure and sale upon any mortgage of or lien upon any part of the property of such bankrupt before the date of the fiat or the filing of a petition for adjudication of bankruptcy (*s*).

Effect of bankruptcy of garnishee.

Bankruptcy in the garnishee if the property attached is money, or if goods and the bankrupt has converted them to his own use before the date of the adjudication or filing of the petition, renders the further proceedings on the part of the plaintiff unavailable. But if the goods remain *in statu quo* and are seized by the assignees, they may forthwith be attached in their hands inasmuch as the bankruptcy of the garnishee cannot in anywise affect the property in goods of the defendant, and as he himself might maintain trover for them against the assignees, so could his creditor maintain an attachment upon them (*t*). But of course this must be subject to the provisions of the bankrupt laws as to goods in the order and disposition of a bankrupt at the time he becomes bankrupt by consent of the true owners. Bankruptcy in the

Of plaintiff.

plaintiff does not affect the proceedings, and his

(*s*) See 12 & 13 Vict. c. 106, ss. 133, 184, and a judgment in the Mayor's Court obtained against the garnishee, does not entitle the plaintiff to rank as a judgment creditor in the administration of the garnishee's assets, *Holt* v. *Murray*, 1 Sim. 485.

(*t*) Ashley, page 32, and see 12 & 13 Vict. c. 106, s. 125.

assignees may, notwithstanding, proceed to judgment and execution in his name (*u*).

Effect of separate commission of bankrupt against one defendant.

Joint property for a separate debt cannot be attached, but when joint property of two defendants is attached by a joint creditor it is no answer by the garnishee that a separate commission of bankruptcy has issued against one of the defendants. This was decided in the case of *Bristow* v *Potts, James & John Fletcher*, defendants (*v*), where the Recorder, Sir John William Rose said, "he very lately fully "considered the question before the Court, and had "a decided opinion upon the subject, and that the "attachment might well be supported. Generally "speaking, it is true that if the defendant could "not recover against the garnishee the plaintiff in "attachment cannot, yet there are exceptions to "this rule. The case of a voluntary assignment for "the benefit of all creditors is one; for any creditor "who chooses to attach instead of agreeing to the "assignment may recover from the holder of the "defendant's property though the plaintiff himself "could not, and I am clearly of opinion that this "case is another exception. The objection arises "upon the title in the defendant to recover against "the garnishee; that has been overruled in the case "alluded to. The plaintiff has a joint demand, and "if both defendants were solvent no question "but he might recover. At common law, the "assignees of *James* joining with *John Fletcher*

(*u*) Ashley, page 32, and see 15 & 16 Vict. c. 76, s. 142, by which this rule appears to have been adopted to a certain extent in the superior Court.

(*v*) *Vaillant*, MS. Cases decided in M. C., 28th Jan. 1801.

"might recover beyond doubt. It is a joint debt "only which the plaintiff whose debt is a joint one, "seeks to recover; the separate commission cannot "affect it, for no creditor proving under a separate "commission can come upon the joint property till "the joint creditors are satisfied. Nothing but the "surplus after joint creditors are satisfied can go to "the creditors under the separate commission.

"This is the case of a joint creditor using due "diligence to obtain a priority over the other joint "creditors to which he has a right, and this being "joint property attached to answer a joint debt it "gives a legal preference to the party attaching. I "have therefore no hesitation in saying that the "plaintiff is entitled to a verdict. If, however, "consonant to the rules of Common Law or the "custom of the city of London this determination "should be thought inconsistent with the rules of "Equity it fortunately can do no injustice as the "Lord Chancellor will of course in that case relieve "the party aggrieved," he therefore directed the jury to find a Verdict for the Plaintiff.

Assignee of a bond.

The assignee of a bond cannot in his own name make an attachment of property belonging to the assignor, since he is the assignee of a chose in action, who has only a right in equity to sue in his own name (*w*). Nor is a debt assigned in satisfaction of another debt liable to attachment for the debt of the assignor (*x*).

Of a debt.

No attachment of rent,

No attachment will lie for rent (*y*).

(*w*) *Lord Carteret* v. *Paschall*, 3 Peere Williams, 199.

(*x*) *Lewis* v. *Wallis*, 3 Car. 2 B. R. 199; Sir T. Jones, 222; Bohun Priv. Lond. 277; Bacon's Abr. Custm. of London, H., p. 595.

(*y*) Bohun Priv. Lond. 267.

Goods in the hands of a trespasser cannot be attached (*y*). nor goods in hands of a trespasser;

Nor money obtained by the garnishee through the fraud of defendant (*z*). nor money obtained by fraud;

(*y*) 1 Rol. Abr. 551, 1 Rol. Ab. Customs of Lond., E. L. 20.

(*z*) The case of *Barber* v. *Devaux and Others, Brant, Defendant*, which was decided in the Mayor's Court before the present Recorder, March 31st, 1852, fully explains the law upon this subject. The following is a note of that case taken by the Author, which, as it touches on the nature of the proceeding in many particulars, it is thought desirable to insert.

The plaintiffs, who were corn dealers at Norwich, on the 21st of April, 1851, attached the sum of 549*l.* in the hands of the garnishees as the proper monies of the defendant. The garnishees, on the 17th of May, 1851, pleaded *nil habent*.

On the trial it appeared in evidence, that at the beginning of the year 1851, the defendant, who then resided and carried on the business of a corn merchant at Ghent, in the kingdom of Belgium, applied by letter to the garnishees to act as his agents or bankers in London, to which the garnishees having consented, it appeared that during the month of April, 1851, until the failure of Brant, they received from Brant a quantity of bills of exchange or orders for money at three days' sight, which were drawn upon parties in London, Southampton, Liverpool and Ireland, and at the same time that they received each draft it was usually accompanied by a bill of lading of corn which was delivered to order or indorsed to order.

The course of business was for the garnishees as bankers or agents of Brant, to send forward the bills of exchange or orders, and on the same being paid by the drawees or persons to whom the order was addressed, the bill of lading against which the draft or order was drawn was delivered over to the drawees and the money was received by the garnishees.

Drafts of defendant upon garnishees were from time to time paid by the garnishees to the extent of the funds of Brant which were from time to time in their hands.

At the time the attachment was lodged, *viz.* 21st April, 1851, the garnishees had in their hands the net sum of 2696*l.* 2*s.* 4*d.*,

nor debts of record;

Debts of record, that is, upon judgments recovered, or recognizances cannot be attached (*a*).

after allowing for the deductions for the charges of raising the money, and which was composed of three sums, namely, 870*l.* 8*s.* 10*d.*, being the balance remaining in the hands of garnishees on a sum of 1380*l.* 5*s.* 4*d.* received from Messrs. Cole and Prosser, of Waterford, upon an order or bill of exchange remitted by the defendant, and which had been accompanied by a bill of lading of corn to be shipped by a vessel called the Harmonie, another sum of 621*l.* 17*s.* 6*d.* from Lomèr of Southampton upon another bill remitted by the defendant through the garnishees' house, and also accompanied by a bill of lading of corn purporting to be shipped in a vessel called the Speedwell, and a third sum of 1203*l.* 16*s.* from a Mr. Adams, of Cork, upon a bill remitted in the same way by defendant, and accompanied by a bill of lading of corn purporting to be shipped in a vessel called the Joanna Maria. Notices were proved, the earliest on the 22nd of April, (being all after the attachment) from the three parties above mentioned, to the garnishees, of the fraud committed by defendant, and directing them to hold the money for those parties, and it was also proved that the garnishees had paid over the several sums to the different parties defrauded, upon an indemnity being given by them to the garnishees. It was proved that all these bills of lading were forgeries, and that no corn had ever been received by the three parties above mentioned by any of the vessels; that the vessels never arrived, nor indeed had any corn ever been shipped in them by Brant the defendant, who was proved to have absconded from Ghent and his handwriting was proved to all the bills of lading, and the signatures, purporting to be those of the captains, were proved to be forgeries. These facts were proved by the different parties who had been defrauded; by the clerks of the garnishees; and by the depositions of witnesses at Ghent, taken upon interrogatories abroad.

Upon this evidence, *Ryland* and *Randell* for the plaintiff, submitted that it was no defence to the action on the ground, in the

(*a*) 1 Rol. Abr. Customs of London, F. L. 1.

After issue in the superior Courts the debt which is the subject of the issue cannot be attached

nor debt the subject of action in superior Court.

first place, that the garnishees as agents of the defendant were not at liberty to dispute the title of their principal. Moreover, that it appeared that the garnishees having received the money and mixed it up with other monies, they could not separate it. That it would have been different in the case of a specific chattel, and that at all events, the proper course would have been for the parties who had been defrauded, to have filed bills of proof claiming the money in the garnishees' hands as their money, to which the plaintiff in the attachment would have appeared and pleaded, and the question might then have been tried, whether the money was the money of these parties. They cited the case of *Taylor* v. *Plummer*, 3 M. & S. 573.

Bramwell, Q. C. and *Locke*, for garnishees, contended that the money in the garnishee's hands being the produce of a fraud committed by the defendant; the garnishees who were the innocent holders of that money for the defendant, where bound when the notices were served upon them, to pay the money to the several parties who had been defrauded of it, and cited *Buller* v. *Harrison*, 2 Cowp. 565. That the plaintiff had no better title to the money than the defendant had. The question was whose money was it at the time of the attachment? The fact of the notices being given after the attachment was lodged was immaterial, for since the defendant had obtained the money by fraud, the garnishees never could be said to hold it for him; but that the parties defrauded might always have maintained an action against the garnishees to recover it back, and that the defendant could have maintained no action. *Hardman* v. *Willcock*, 9 Bing. 382.

The Recorder. The defendant stands in the same position as the plaintiff. The defendant is not a creditor of the garnishees, but Messrs. Prosser and Co., and the other parties who have been defrauded are. It was an action for money had and received. Mr. *Ryland* says, if it had been a chattel in the hands of the garnishees it would have been different; but I think, that all Lord Ellenborough meant in the case of *Taylor* v. *Plummer* was, that where the money could be identified as belonging to a particular transaction the principal might recover

because an inferior Court cannot attach a debt in a higher Court (*b*).

Nor after imparlance;

So a debt could not be attached after an imparlance in a superior Court (*c*).

nor after issue of writ in superior Court;

If a writ be issued in a superior Court and made returnable, the debt cannot be attached (*d*). But it was held otherwise when the writ was issued after the attachment covinously with an ante date.

nor after suit in equity commenced.

Nor will an attachment lie after a suit in equity commenced (*e*).

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it. I think the money in this case quite sufficiently identified. *The Recorder* then explained the nature of an attachment to the jury, and stated that the question for their consideration was, whether between the date of the attachment and the plea, the garnishees had any money of the defendant in their hands. When a man obtains money by fraud and places it in an agent's hands, he acquires no property in it. The defendant could not here maintain an action against the garnishees. When a party discovers the fraud; and the money has not in the mean time been paid over, the person defrauded has a right of action against the principal. As to a bill of proof, it is optional with the party so claiming the money to file one, but if he chooses to rely upon the garnishee, he may do so. It cannot be necessary that he should file a bill of proof. It is only when he cannot rely on the garnishee.

If you think the money the proceeds of a fraud, then, I think, it was not the defendant's money. If no fraud, then the plaintiffs are entitled to recover.

The jury then found a verdict for the garnishees, and afterwards by consent, a similar verdict was entered, in several other attachments in which the same state of facts existed.

(*b*) 1 Rol. Abr. Customs of London, F. L. 1; Id. L. 2; *Anon.* 2 Shower, 372, No. 356; *Hays* v. *Barnaby*, Comb. 427.

(*c*) Id. L. 3; *Babbington's case*, Cro. Eliz. 157.

(*d*) Id. L. 4; *Palmer* v. *Hooke*, 1 Ld. Raym. 727; *Brook* v. *Smith*, 1 Salk. 280.

(*e*) Id. L. 5; 2 Ch. C. 233.

Money in hands of sheriff cannot be attached;

Money in the hands of the sheriff by execution cannot be attached (*f*).

nor money awarded on reference from superior Court;

Nor money awarded upon a reference from the superior Courts (*g*).

nor money to be paid under Master's allocatur.

Nor a sum of money directed to be paid by the Master's allocatur (*h*).

Plaintiff may proceed by attachment and action in superior Court.

Although a debt for which the defendant has commenced an action against the garnishee in a superior Court cannot be attached, still the plaintiff by attaching a debt due to the defendant in the Mayor's Court does not preclude himself from bringing his action against the defendant in the superior Courts pending the attachment, for the same debt which is the subject of the plaint in the Mayor's Court (*i*).

Property of intestate in hands of the ordinary cannot be attached.

The property of an intestate in the hands of the ordinary cannot be attached (*k*).

When debt due to deceased person cannot be attached.

A debt due to a deceased person cannot be attached on a plaint against his personal representative, although he be sued under that description, unless he be sued for a debt due from the deceased (*l*).

Executor.

An attachment will not lie unless the money or goods were due or belonging to the testator at the

(*f*) 1 Leon, 264.

(*g*) *Grant* v. *Harding*, 4 T. R. 313, n.; *Caila* v. *Elgood*, 2 D. & R. 193.

(*h*) *Coppell* v. *Smith*, 4 T. R. 312.

(*i*) See Russell's Chitty, Contr. 680, 4th Ed.; *Laughton* v. *Taylor*, 6 M. & W. 695; *Denton* v. *Maitland and Others*, 15 L. J., N. S. 332.

(*k*) Comyn's Digest, Foreign Attachment, B.; *Masters* v. *Lewis*, 1 Ld. Raym. 56; 3 Salk. 49.

(*l*) Com. Dig. Attachment, D.; *Hodges* v. *Cox*, Cro. Eliz. 843; Toller, 478.

time of his death, although assets in the hands of the executor (*m*). And where an executor sells the goods of the testator, the money arising from the sale cannot be attached in the hands of the executor (*n*).

Will not lie for money awarded to an executor.

Where money is awarded to an executor an attachment will not lie for it on the ground that it was not any debt due to the testator at the time of his death; and if this money should be attached, the executor would be liable to a devastavit, and yet would have no remedy for the sum awarded (*o*).

Damages recovered by executor not attachable.

Where an executor recovers in trespass for taking away the testator's goods, the damages are assets, yet they are not attachable. So damages recovered upon covenants made to the testator (*p*).

Nor a legacy.

As we have already seen there cannot be an attachment of a legacy in the hands of an executor (*q*). And if an executor take a bond for a debt due to the testator, the money due upon the bond cannot be attached (*r*).

When money due on bond to executor not attachable.

Property in hands of Government cannot be attached,

No property of any description can be attached in the hands of the Government or its agents unless where the agents make themselves personally liable (*s*).

nor in hands of Bank of

Goods and debts, funds and dividends cannot be

(*m*) *Horsam* v. *Turget*, 1 Vent. 113; S. C. 1 Lev. 306.

(*n*) Com. Dig. Attachment, D., *Horsam* v. *Turget*, 1 Vent. 111.

(*o*) Bohun Priv. Lond. 265; *Horsam* v. *Turget*, 1 Vent. 112.

(*p*) Bohun Priv. Lond. 266.

(*q*) *Page's case*, 1 Rol. Abr. 551; 3 Bulst. 244.

(*r*) *Horsam* v. *Turget*, 1 Vent. 113; Comyn's Digest, Foreign Attachment, D.

(*s*) *Gidley* v. *Lord Palmerston*, 3 Brod. & Bing. 286; *Macheath* v. *Haldimand*, 1 T. R. 172; *Unwin* v. *Wolseley*, Id. 674.

attached in the hands of the Bank of England or the East India Company. England or East India Company.

Goods or money cannot be attached in the hands of the debtor or defendant himself, though they may be sequestered by the custom of London.

It is said by Mr. Ashley, in his *Doctrine and Practice of the Law of Attachment*, that no attachment can be made of property on the River Thames; but there is no direct authority for this position, and there is great reason to suppose, from entries in the books of the Corporation, that such attachments were formerly made. Property on the River.

By the 7th of Anne, c. 12, s. 3, the property of ambassadors and other public ministers of foreign princes is exempt from attachment; and even before that act it would seem that, by the law of nations, their property as well as their persons was sacred (*t*). Property of ambassadors &c. cannot be attached,

An attachment cannot, by a recent decision (*u*) of nor of a foreign sovereign.

(*t*) Vattel, 4 Ed. B. 4, c. 7, p. 470.

(*u*) *Wadsworth* v. *Queen of Spain*; *De Haber* v. *Queen of Portugal*, 20 L. J. 488. These cases, decided for the first time in this country, that an attachment could not be made on the property of a foreign Prince. In delivering the judgment of the Court, Lord Campbell, after referring to the opinion of Bynkershoek in his *Treatise de foro Legatorum*, as being in the affirmative, then goes on to say, "But this author, who is well known "to have an antipathy to crowned heads and monarchical go- "vernment, admits that other jurists differ from him (quod ad "bonâ externorum Principum non una tamen omnium sententia "est), and he goes on to cite a decision in his own country which "completely overturns his doctrine," page 497. But Bynkershoek likewise cites several other cases in support of his doctrine, and I subjoin them all, commencing with the one cited by his Lordship:—

Anno 1668 privati quidam regis Hispanici creditores tres ejus

the Court of Queen's Bench, be made on the property of a foreign potentate.

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regni naves bellicas, quæ portum Flissengensem subiverant, arresto detinuerant, ut inde ipsis satisfieret, Rege Hispan. ad certum diem per epistolam in jus vocato, ad Judices Flissingenses, sed ad Legati Hispanici expostulationes Ordines Generales 12 Dec. 1668 decreverunt, Zelandiæ Ordines curare vellent, naves illæ continuo dimitterentur liberæ, admoneretur tamen per literas Hispaniæ Regina, ipsa curare vellet, ut illis creditoribus, in causa justissima, satisfieret, ne repressalias, quas imploraverant, largiri tenerentur. Vide Aitzema Lib. XLVIII. p. m. 1023-1027.

Anno 1654 creditores comitis Palatinæ, quæ hic vulgo Bohemiæ Regina audiebat, ut ejus bona arresto includere liceret, ab Ordinibus et curia Hollandiæ obtinere non potuerint, quemadmodum auctor est ipse ille Aitzema Lib. XXXIV. p. m. 76.

Anno 1628 cum enim Elector Brandeburgicus non satisfacerit creditori cuidam suo, qui ea de re ad Ordines Generales conquestus erat, illi mense Decembri ejusdem anni decreverunt, creditor arresto includeret, quæ Elector sub senatu Brabantino et Flandrico habebat, et coram his cum eo litigaret, ut narrat Aitzema, Lib. VIII., p. m. 672 et 673, et litigatum deinde est coram senatu Flandrico, de quo Elector per legatos anno 1631, apud ordines Generales expostulavit, ut habet ipse ille Aitzema, Lib. XI., p. m. 445. Etiam Mercator Amsterdammensis anno 1670. Amsterdami arresto detinuit pecuniam, quæ Reipublicæ Venetæ debebatur, indignante quidem plurimum Republica, sed relaxationem pecuniæ non obtinente, nisi per transactionem, cujus meminit Decretum Ordinum Hollandiæ, 3rd Dec. 1670. Rursus anno 1689, creditor quidam Ducis Mecklemburgensis ejus bona in Hollandia arresto Curiæ inclusit, de quo ipse, atque si jus Gentium læsum esset, prolixe quidem quiritatus est ad ordines generales, sed relaxatum esse ad ejus prius non comperi. Simpliciter ea de re cum ipsa Curia deliberari jusserunt Ordines Hollandiæ Decreto, 19th Oct. 1689, utrumque quod dixi, Decretum reperies inter inedita Ordinum Hollandiæ Decreta ad eos annos. Jacobus, Dux Courlandiæ, multa millia debebat Mercatori Amsterdammensi ex laudo et spontanea condemnatione Senatus supremi. Quum non solveret, et ejus hæredes, Principes

IV. OF DISSOLVING OR DEFEATING AN ATTACHMENT.

THE defendant, or the garnishee for him, may put in substantial bail to the plaintiff's action, whereby the attachment is dissolved, and this may

By bail to action in the Mayor's Court,

Courlandiæ, in Hollandia et Zelandia haberent naves et merces, Senatus Supremus anno 1696, et sæpe deinceps, eas arresto detinuit, inserta Mandato Clausula Edicti, et constituto etiam Curatore, qui Principes defenderet. Ipse Senator quibusdam ex his causis judicandis interferi nam maxima pars debiti adhuc exsoluta non est. Quin paucis abhinc annis Rex Borussiæ qui nunc rerum potitur, ex mandato curiæ in jus vocatus est cum clausula Edicti, arresto inclusa parte hæreditatis Wilelm III. de qua pluribus litibus actum est, et nondum transactum Offendebat Regem non tam in jus vocatio, quam clausula Edicti, per campanam, ut fit, populo significata, et forte ea carere possumus, ubi Princeps legatum habet, qui velit recipere literas. Litigavit tamen Rex Borussiæ apud curiam aliquamdiu, et cum in causa quadam, 15 Jul. 1716, victus esset, appellat ad Senatum Supremum et litem ibi contestatur. Sed cum revocato mandato litem nollet persequi, nec appellationi renunciare, hæres Wilelmi III. solus per advocatum causam oravit, sed 18 Jul. 1719, victus est qui vicerat, defensus ab indefenso. He then adds,—Scio et in Geldria et alibi, Principes externos interposito arresto, in jus vocari, et adeo ea res in mores transivit, ut, tanquam de re liquida, nunc equidem inter omnes videatur constare. Cavendum autem est, ne res ad injuriam vergat, nec quod inter privatos summum jus est ex iniquis forte Pragmaticorum Decretis, id summa injuria ad Principes porrigamus. Aiunt illi, vel rem minimam, arresto detentam, sufficere ad subjectionem fori. Largiamur inter privatos, sic enim obtinuit sed an ita Principis equus, per alterius Ditionem transiens, poterit includi, ut causam præbeat foro? si me auctorem sequaris, non poterit, nec quicquam magis erit contra præsumtam, si non testatam mentem entium. —*Bynkershoek de foro Legatorum*, c. 4.

when put in. be done at any time before satisfaction entered upon the record. The entering up of satisfaction on the record renders the attachment indissoluble

By removal of cause into by bail or render (*u*). The cause may be removed

(*u*) The following are the rules adopted by the Court upon this subject:—

An attachment may be dissolved by bail or by payment of money into court with the defendant's consent.

When the sum in the garnishee's hands is larger than the debt sworn to by the plaintiff, by paying the amount of the plaintiff's debt so sworn to, or where the money in the garnishee's hands is less than the amount sworn to as the plaintiff's debt, then such sum as the Court may direct.

The names, residences, and occupation of all persons proposed as bail to be entered with the registrar, and two days' notice of the justification of such bail to be given in writing to the plaintiff's attorney. Such notice containing the names, residences, and occupation of all persons proposed as bail.

Notice of bail to dissolve an attachment shall not be deemed any stay of proceedings in such attachment except as regards the payment of the proceeds of the execution over to the plaintiff's attorney.

If in any case of notice of bail the bail do not justify at the time appointed then the plaintiff shall be at liberty to proceed in the attachment and to sign satisfaction, and the proceeds of the execution paid over as before.

All housekeepers, if sufficient, whether within the City or elsewhere, to be allowable as bail for dissolving attachments.

That a memorandum of all recognizances of bail to dissolve attachments be taken by the registrar and be entered in a book to be kept for that purpose.

All exceptions to bail to dissolve an attachment to be entered with the registrar, and notice of such exception be given by the plaintiff's attorney in writing to the attorney putting in such bail.

In case of added bail the same form to be adopted of entry with the registrar and notice to the plaintiff's attorney.

Upon the dissolution of an attachment the registrar to grant a certificate thereof.

And thereupon the defendant may plead to the bill original,

into the superior Court by the defendant by *habeas corpus* or *certiorari*, whereby on the defendant putting in special bail as he would have been bound to do in the Mayor's Court, the attachment is dissolved (*v*). If special bail be not put in by the defendant, the superior Court will order a *procedendo* (*w*). superior court, and putting in special bail.

Where the action was commenced against an administrator in the Mayor's Court, and a debt to the intestate's estate was attached, it was held that the defendant, although an administrator and not generally bound to give special bail, must put in Same rule in case of executors, &c.

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and proceed in the method prescribed in other actions (see Appendix), Ordinary Actions.

Immediately judgment is signed by the plaintiff, the record to be filed by the registrar and preserved in the office.

(*v*) As to the removal of causes from inferior courts, see 1 Tidd's Pr. 397, and *Clapham's case*, Cro. Car. 79; *Cross* v. *Smith*, 1 Salk. 148, and 2 Ld. Raym. 837; *Horton* v. *Beckman*, 6 T. R. 760; *Keat* v. *Goldstein*, 7 B. & C. 525, 1 Mann. & Ry. 305; *Dorrington* v. *Edwards*, Skinner, 244. When the cause is removed into the superior Court by *habeas*, the plaintiff, if he choose to proceed with the action, must declare *de novo*,—but he need not declare in the same form of action, *Bowerbank* v. *Walker*, 2 Chit. 511; *Clark* v. *Dixon*, 3 M. & S. 93. In the case of *Loveridge* v. *Whitrow*, 1 Mod. 213, it was ruled that if A. bring debt in London against B. and attach goods of B. in the hands of C. from whose possession the goods are not removed, and B. by *certiorari* bring the cause into the King's Bench, and put in bail, the attachment is at an end, and C. ought to deliver the goods to B.; which if he do not do, B. may have trover or replevin; but the King's Bench will not compel him to deliver them, because he is no party in Court: and all things now are as if there never had been an attachment.

(*w*) *Day* v. *Paupiers*, 13 Q. B. 802, and see the case of *Seamett* v. *Rice*, 1 Dowl. (N. S.) 333, as to the practices of putting in the bail in the Court above.

special bail, or a *procedendo* would be ordered. Lord *Campbell*, C. J. "Generally, an administrator "need not give special bail on removal by *certiorari*; "but there must be an exception in the case of the "custom if this applies to administrators at all; else "the custom would be illusory" (*x*).

May be removed by one of several defendants.

One of several defendants may remove the cause by *certiorari* into the Queen's Bench, but he must put in bail for all the defendants, otherwise a *procedendo* will issue (*y*).

Attachment not removable.

Although, as we have seen, the *cause* may be removed into the superior Court, still the garnishee cannot remove the *attachment*, because the proceeding against the garnishee is only by the custom of London, and the superior Court has no jurisdiction in attachments (*z*).

When cause removable.

The cause cannot be removed after the jury are sworn (*a*).

Prohibition.

An attachment may also be defeated by a pro-

(*x*) *Bastow* v. *Gant*, 13 Q. B. 807, and see Bohun Priv. Lond. 81.

(*y*) *Keat* v. *Castles*, 7 B. & C. 525.

(*z*) *Crofte's case*, 1 Rol. Ab. 268; 2 Rol. Ab. 69; *Watson* v. *Clarke*, Carth. 75; *Smith* v. *The Mayor and Aldermen of London*, 5 Mod. 78; Anon. 1 Salk. 352; *Fazakerly* v. *Baldoe*, 6 Mod. 177, S. C., Say. Rep. 156; *Ballard* v. *Bennett*, 2 Burr. 777, 778; *Pope* v. *Vaux*, 2 Black. Rep. 1060; *Beard* v. *Webb*, in error, 2 Bos. & Pul. 93; *Bulmer* v. *Marshall*, 5 B. & Ald. 821; *Rex* v. *Chamberlain of Worcester*, 2 Kenyon, 469; *Calthorp Cases on the Customs of London*, 50; *Clark* v. *Denton*, 1 B. & Ad. 92; *Horton* v. *Beckman*, 8 T. R. 760; and see Tidd, vol. 1, 401.

(*a*) *Cox* v. *Hart*, 2 Burr. 758; *Godley* v. *Marsden*, 6 Bing. 433; *Kemp* v. *Balu*, 13 L. J. 149; and see *Bruce* v. *Wait*, 1 M. & G. 34, Maule, J.

hibition, which is an original writ issuing out of one of the superior Courts, and directed to the Judge of an inferior Court, or to the party to a suit (*b*) in such Court, or any other whom it may concern, commanding that no further proceedings be had in any particular cause. This writ is granted on the ground, of an inferior Court having no jurisdiction, or having committed an excess of jurisdiction, in the cause. The cases of *De Haber* v. *The Queen of Portugal*, and *Wadsworth* v. *The Queen of Spain* (*c*) before referred to were extremely important decisions to shew when the Court of Queen's Bench will grant a prohibition to the Mayor's Court in the case of a foreign attachment. The decision in those cases was that:— When it will be granted.

No English Court has jurisdiction to entertain an action against a foreign sovereign for anything done, or omitted to be done, by him in his public capacity as representative of the nation of which he is the head. When the Lord Mayor's Court of London has no jurisdiction over the person of a defendant against whom a plaint has been entered in that Court, the awarding process of foreign attachment against a person having funds in his hands belonging to the defendant as a means of compelling an appearance is an excess of jurisdiction for which prohibition will lie. What an excess of jurisdiction.

When, therefore, a plaint was entered in the Lord Mayor's Court against the Queen of Portugal "as reigning sovereign and supreme head of the

(*b*) 2 Inst. 601; *Comyn's Digest*, Prohibition B. C.; *Bacon's Ab.*, Prohibition A. 1; and see *Lloyd on the Law of Prohibition.*

(*c*) Law Journal Rep. vol. 20, p. 488, N.S.

"nation of Portugal," to recover a debt alleged to be due from the Portuguese government, and a foreign attachment had issued according to the custom of the city of London, the Court made absolute a rule for a prohibition to restrain proceedings in the action and in the attachment.

The same principle was applied to a case where a plaint was entered in the Lord Mayor's Courts against the Queen of Spain, not expressly as reigning sovereign and head of the Spanish nation, but where it appeared by affidavit that the plaintiff's sole cause of action arose upon a Spanish government bond, purporting to have been issued under a decree of the Cortes sanctioned by the Regent of Spain, in the name of the Queen, then a minor.

On whose application writ granted.

The writ of prohibition may in such cases be granted on the application of the Queen (the defendant) before she has appeared to the action in the Lord Mayor's Court; or on the application of the garnishee, either before or after he has pleaded *nil debet*.

Where no jurisdiction, party need not have pleaded,

Where an inferior Court has no jurisdiction to entertain a suit, it is not necessary to entitle a party to a prohibition that he should have there pleaded to the jurisdiction, and that the plea should have been overruled.

when granted on application of stranger to the proceedings.

The Court is bound to grant a prohibition where a Court has no jurisdiction, upon the application of a stranger as well as of a party to the proceedings.

The process of foreign attachment can only be resorted to where the cause of action against the original defendant arises within the jurisdiction of the Court from which the attachment issues.

Wager of

The garnishee may appear in Court by his

attorney and wage his law or plead that he has no money in his hands of the defendant, or other special matter or he may confess it. The course pursued is thus explained in Bohun. law by garnishee, plea by.

If A. attaches money in the hands of B. as monies of C., and in truth B. had no monies in his hands belonging to C., but expects to receive it shortly, B. after four defaults passed (which is usually in four Court days) may discharge the attachment by coming into Court personally, and giving a rule to declare upon his attachment (*d*); and if A. do not declare in three days following, then judgment will be entered against A. to discharge the attachment (*e*); but if A. declare then B. may plead he hath no monies in his hands belonging to C. at the time of the attachment, or at any time since (*f*); and put the plaintiff to prove any money in his hands, which if the plaintiff cannot do, a verdict will be given for B. the garnishee; or else B. may discharge the attachment by waging of law in this form, viz., He the said garnishee must cóme into Court, and take the following oath: *You shall swear, that at the time of the attachment made, or at any time since, you had not, owed not, nor did detain, nor yet have, or owe, or do detain from C. the defendant named in the original bill and attachment aforesaid, the sum of* 20*l. or other sum, &c., so as aforesaid in your hands attached, nor any penny thereof, in manner and form, as the plaintiff by his bill original and attachment aforesaid hath supposed.* So help you God. Oath of garnishee in wager of law.

(*d*) See *ante*, 14.
(*e*) See *ante*, 14, 15.
(*f*) See *ante*, 16.

The garnishee may thus wage law upon oath; but if the plaintiff hath two witnesses that will swear that the garnishee had monies in his hands when the attachment was made, he must cause their depositions to be taken by the town clerk, and that will stop the garnishee from waging his law, and force him to plead, &c.

If the garnishee refuse to wage law the plaintiff may try the cause in four Court days following, after the *scire facias* comes into Court (*g*).

By verdict for garnishee.

When the garnishee pleads and obtains a verdict, the attachment is of course dissolved, but the action against the defendant still remains. The usual plea by a garnishee is the plea of *nil habet* (*h*), and although the garnishee may plead special matter, still it is held in practice that evidence may be given under the general issue of any facts which shew that the garnishee was not at the time of the attachment, or at any time before plea pleaded, indebted to the defendant, or that between those dates he did not hold the monies or goods of the defendant (*i*). The *onus* is on the plaintiff to shew that the monies or goods in the attachment were subject to the attachment at some time between the date of the attachment and the plea pleaded.

Nil habet usual plea by garnishee,

evidence under.

Attachment defeated by the lien of the garnishee,

where not to the full ex-

The attachment may be defeated by the lien of the garnishee upon the goods of the defendant, provided it be to the full amount of the value of the goods attached. If the amount of the lien be

(*g*) See *ante*, p. 17, and *post*, p. 59, Bohun Priv. Lond. 258. note m.

(*h*) See form in Appendix, No. XII.

(*i*) See *Thompson* v. *Davenport*, 4 M. & R. 110.

not to the full extent of the value, then the judgment is taken for the goods subject to the garnishee's lien, which must be ascertained from the garnishee or at the trial; and in the case of mutual debts between the defendant and the garnishee, the plaintiff can only recover the balance against the garnishee (*k*). tent of the value attached. Mutual debts.

The lien must exist at the time the attachment is made (*l*). Lien must exist at the time attachment made.

We have seen that the defendant or the garnishee may before satisfaction acknowledge on the record,

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(*k*) *Nathan* v. *Giles*, 5 Taunt. 558; Bohun Priv. Lond. 270.

(*l*) *Nelson* v. *J. Martin*, *G. Stone*, *J. Martin*, and *R. Martin*, *C. W. Hooper*, and *B. Hooper*, defendants, was a case tried before the present Recorder on the 30th April, 1852. *Ryland* and *Locke* for the plaintiff; *Randell* and *Unthank* for the garnishees.

The attachment was lodged on the 12th of February, 1852, and the plea pleaded the 28th of February, 1852. It appeared by the evidence of Mr. Stone, one of the garnishees, that on the 12th of February, 1852, there was a sum of upwards of 800*l.* placed to the credit of the defendant in the hands of the garnishees. That the garnishees had been in the habit of discounting the bills of the defendants and placing the amount to the credit of the defendants, debiting them with the discount. That on the 12th of February the garnishees were the holders of several bills which became due on the 12th, 20th, and 27th of February, that the bills had not been paid. No notice of dishonour of any of the bills was proved.

It was submitted on the part of the garnishees that, as bankers, they had a lien upon the money placed to the credit of the defendants, inasmuch as at the time of the plea pleaded they had money in their hands respecting which a liability might be incurred; but the Recorder held that the lien was not existing at the time of the attachment, inasmuch as none of the bills had fallen due at the time of the attachment, and that the money might have been drawn out of the garnishees' hands during the

put in substantial bail, and so dissolve the attachment.

How attachment defeated after satisfaction on the record.

After satisfaction acknowledged upon the record, and when the attachment is thereby complete, the defendant has, as before mentioned, a year and a day to come in and disprove or avoid the debt demanded against him by the plaintiff.

How the defendant can disprove the debt, by render or security.

Scire facias ad disprobandum debitum.

In order to disprove the debt, the defendant must either render his body to prison, or give security to pay the debt demanded, and then may bring a *scire facias* which is called a *scire facias ad disprobandum debitum;* and the plaintiff in the attachment must be summoned to appear and plead thereunto; and after the plaintiff hath pleaded, if the debt demanded be not a debt due by bond, bill, or specialty under hand and seal, the defendant may wage his law, and thereby discharge himself of the money demanded by the plaintiff, which must be done in Court as followeth:

Wager of law by defendant.

I, A.B. do swear that upon the day of (naming the day the action was entered) I did not owe nor detain, nor as yet do owe or detain from C.D. the plaintiff, the sum of 120*l.* nor any part or parcel thereof, in manner and form as the plaintiff by his bill original hath supposed. So help me God.

And if the defendant be a freeman of London, he must have six compurgators who will swear, *That they believe in their consciences, that what the defendant swears is true.* But if the defendant be

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whole of the 12th, for the bankers could not refuse to pay cheques because the bills might not be paid. He, therefore, directed the jury to find a verdict for the plaintiff.

Verd ct for plaintiff, 506*l.* 5*s.* 8*d.*

not a freeman of London, then two compurgators will be sufficient (*m*).

If the defendant shall not think fit to wage his law, but will put the plaintiff to prove his debt, he must in such case plead that he owes nothing to the plaintiff (*n*), an issuable plea. And in case the plaintiff fail to prove his debt, a verdict and judgment will pass against him for restitution of the money, or value of the goods attached and condemned; and if the plaintiff in the attachment shall in such case be taken in execution, and shall be unable or unwilling to restore the money, his security or pledges that he gave when the money was condemned, will be compelled to pay the money; for the sureties cannot discharge themselves by rendering the plaintiff's body to prison.

Defendant's plea

In case of verdict for defendant.

But if the plaintiff prove his debt, the verdict will pass for the plaintiff in the attachment, and then judgment will be entered for the debt proved to be due; and if so much was not recovered upon the attachment or sequestration, the bail for the defendant are liable to answer, and pay the same with costs (*o*).

Where there is a verdict for the plaintiff.

We have seen that a larger sum may be recovered in the action than the sum attached. The garnishee after trial between himself and the plaintiff, may likewise put in bail in the absence of the defendant, before the Lord Mayor, and so dissolve the

Bail put in by garnishee after trial of attachment.

(*m*) See *Barry* v. *Robinson*, 1 New Rep. 295. The practice of waging law is now entirely obsolete, and has been abolished in the superior Courts by the 3 & 4 Wm. 4, c. 32, s. 13; and the words of that section would seem to apply to all Courts.

(*n*) See form in Appendix, No. VI.

(*o*) 1 Bohun Priv. Lond. 280; Lex Lond. 41.

attachment, and all the proceedings thereon; but then he and his security are liable to what debt the plaintiff shall make appear to be due from the defendant (*p*).

The proceeding against the defendant is as before stated, by original bill or plaint, and where he pleads *nil debet* (as we have just seen that he is entitled to do) the cause is tried in the same manner as an ordinary action in the court.

Plaint action on *concessit solvere*.

The original bill or plaint (*q*) is an action of debt upon a *concessit solvere* by the custom. And it may be brought in all cases where an action would lie to recover liquidated damages.

Form.

The form given in the note in *Williams' Saunders* as the one used in London is, That the defendant, in consideration of divers sums of money before that time due and owing from the said defendant to the said plaintiff, and then in arrear and unpaid, *granted and agreed to pay* (*concessit solvere*) to the said plaintiff, the said £ where and when the same should afterwards be demanded, yet, &c. Mr. Justice Maule in the case of *Bruce* v. *Wait*, observes (*r*) that "Mr. Serjeant Wil-"liams is quite correct in what he states to be the "form."

Where for goods sold.

When the action is for goods sold and delivered, it is said that it was agreed for law, that in debt in London upon a *concessit solvere* by the custom, the declaration shall be that *for merchandises to him before sold he granted to pay* 10*l.*

(*p*) Bohun, Priv. Lond. 260; Lex Lond. 33.

(*q*) See the form in Appendix, No. IV.

(*r*) 4 M. & G. 33.

so that the merchandise must be mentioned (*s*), and yet the merchandise is not traversable.

The case of *Cunningham* v. *Cohen* (*t*), decided in the Mayor's Court by Sir William Rose, Recorder, 17th May, 1797, is important, as shewing the description of claims that this action will embrace.

It was an action upon the customary count (*u*). The defendant pleaded the general issue (*nil debet*) (*v*).

At the trial on the 17th of May, 1797, it was proved that the plaintiff in quality of insurance broker, had effected several policies on different ships belonging to the defendant by his desire. That the first policy was made on the 6th of July, 1796, and the last on the 12th of October, in the same year. The balance in his favour after deducting some sums for returns on convoy amounted to 738*l.* 9*s.* 3*d.* On the cross-examination of the plaintiff's witnesses, it appeared that there is a general usage between brokers and underwriters to settle their accounts at the end of the year, and the broker is therefore entitled to credit for the premiums until the Christmas after the policy is made. But no similar usage exists between the broker and the assured. In consequence of this usage the plaintiff had not paid the premiums upon any of the policies which were the

(*s*) 1 Bro. London, pl. 15; *Turbill's case*, 1 Williams' Saunders, 68, n. 2. But see the form of *concessit solvere* in the note, and *ante*, p. 60, and the case of *Williams* v. *Gibbs*, 5 A. & E. 208.

(*t*) Vaillant MS. Cases in M. C.

(*u*) See Appendix, No. IV.

(*v*) See Appendix, No. VI.

subject of the present action at the time of the commencing it, though in February last he did settle with some of the underwriters, but some were unpaid even at the time of the trial.

The plaintiff further proved the sum of *l.* 14*s.* 6*d.* due to him from the defendant for wine.

The Recorder. In this action the plaintiff declares that a sum of money being due and owing to him from the defendant he undertook to pay it. I think if the plaintiff could frame any declaration whatever, upon which he could recover it in a superior Court under the existing circumstances of this case, he may recover upon a *concessit solvere*, and I am of opinion that it is immaterial when the broker paid the underwriters, his effecting the policies and liability to pay the premiums of them is a consideration sufficient to raise a debt for which the *concessit solvere* will lie. Under this direction the jury found a

Vedict for the plaintiff.

This action lies as we have seen against executors and administrators (*w*).

What put in issue by plea of *nil debet*.

The defendant by his plea if *nil debet* puts in issue the existence of the debt at the time of bringing the action; and, consequently, any matter may be given in evidence under this plea, which shews that nothing was due at that time, as performance, or a release, or other matter in discharge of the action.

(*w*) *Turbill's case*, 1 Williams' Saunders, p. 68, n. 2; Bohun's Priv. Londini, 81; *The City of London's case*, 5 Rep. 826; *Snelling* v. *Norton*, Cro. Eliz. 409, S. C.; and see *Bruce* v. *Wait*, 1 M. & G. 1.

It is observed by Mr. Chitty (*x*) that as the plea of *nil debet* is in the present tense, the Statute of Limitations might be given in evidence under the general issue; but he goes on to observe that this doctrine seems questionable, and the practice is to plead the statute in debt as well as assumpsit, and a tender must be pleaded specially; and a set off must as in assumpsit be either pleaded or notice thereof given.

Writ of error.

There is another course by which an attachment can be dissolved or defeated, viz., by a writ of error, but the judgments of the Mayor's Court cannot be removed by writ of error into any of the Courts of Westminster Hall; they are reviewed in the same manner as judgments given in the Court of Hustings, *i.e.* by commissioners appointed under the Great Seal. By the first charter of Edward III. (*y*), it is directed that all inquisitions of

To what court,

(*x*) Chitty on Pleading, 5th ed., vol. 1, 517.

(*y*) Dated March 1st, 6th year. To be found in the *inspeximus* of Car. 2, and that of Rich. 2, and in Liber Albus.

The city of London possessed, by ancient prescription, a right, confirmed by charter, of exclusive jurisdiction in pleas of the Crown (Charter of Henry 1). This, however, did not prevent the king from exercising, by his commissioned judges and others, various judicial functions over the citizens, both within and without the walls. Many of these functions were no doubt legal, though others would be hard to reconcile with the chartered privileges of the citizens. The king's coroner, his escheator, and probably some other of his judicial officers, possessed a clear right of jurisdiction within the City (Madox's Hist. Exch. vol. 1, p. 784; and *vide* 1st Charter of Richard 2) until their functions were transferred to the civic authorities. The king's judges would likewise sit with legal powers at the gaol delivery at Newgate, associated with the Lord Mayor; and over the Lord Mayor and all other citizens at the eyres held at the Tower, for

the city taken by the king's justices and ministers shall be held at St. Martin's-Le-Grand, except those at the Tower, and those of gaol delivery at Newgate. So that before the charter of Henry VIII., these commissioners sat in St. Martin's-Le-Grand. The second charter of Henry VIII. (*z*), referring to that part of the first charter of Edward III., by which inquisitions are directed to be taken at St. Martin's-Le-Grand, grants that such inquisitions shall for the future be taken at Guildhall, or other place within the city, thought more convenient by the justices before whom such inquisition shall be taken.

how obtained.

The party wishing for the examination of a judgment given in this Court, on petition to the Lord Chancellor, Commissioners, or Keeper of the Great Seal, praying the same, has a commission of errors (together with a writ of error) made out, directed to certain of the Judges of the Courts of Westminster Hall, empowering them, or any two of them, to cause the record of the judgment to be brought before them at the Guildhall, London, and to examine the same, and correct the errors therein, upon which a precept issues under the hands of the Commissioners or Delegates, directed to the Mayor and

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adjudicating upon claims of franchises and the defaults and misconduct of the civic magistrates. It was not unusual, however, for the king's judges to *hold inquisitions* in criminal matters, and also to try pleas of the Crown within the City, a practice always remonstrated against by the citizens as contrary to law. Fabian, pp. 440. 444, and notes; Norton's Comm. p. 465; 114, 148, and see *Greene* v. *Cole*, 2 Wms. Saund. 238.

(*z*) Dated 16th June, 10th year. To be found in the Inspeximus of Charles 2.

Sheriffs commanding them, to cause to be brought before them, the commissioners, the record of the judgment: whereupon, according to the custom of the City; after a respite of forty days, the record of the judgment is certified by the Recorder, *ore tenus*, and the matters therein assigned for error being examined, the judgment given in the Mayor's Court is affirmed or reversed, as the case requires. The judgment of the Commissioners, or Court of Delegates, is not conclusive; for, if either party is dissatisfied therewith, by writ of error, the same is removed immediately into the House of Peers, for the opinion and judgment of that Court, which is the dernier resort, and from whose judgment no appeal is permitted.

There has been only one instance of a writ of error from the Mayor's Court for a great number of years; the last occasion was in the case of *De Timadeuc* and others plaintiffs—*De Glimes* defendant, and *Laurie and others* garnishees: and in that case the judgment of the Mayor's Court was upheld (*a*).

Attachment defeated by a bill of proof, why so called Approver.

There is still another proceeding incident to the custom of foreign attachment, by which the plaintiff may be delayed or defeated, and this is by the filing of a bill of proof, so called from the party who exhibits the same, thereby undertaking to prove the matters therein alleged to be true. It is a claim to the property attached, or to an interest therein, by

(*a*) As to this proceeding by writ of error, see *Ballard* v. *Bennett and another*, *Same* v. *Clement*, 2 Burr. 777; *Dicksey* v. *Spencer*, 3 Leon. 169; *Greene* v. *Cole*, 2 Wms. Saund, 238; *Bruce* v. *Wait*, 1 M. & G. 1; Emerson on the City Courts, 27. 76. 97; 2 Bacon's Ab. 215; Tidd's Practice, 2. 1138.

some person not a party to the previous proceeding, who is called the approver. The substance of the bill of proof (*b*) is that the claimant, or the approver, as he is called in the pleadings, prays to be admitted, to prove that the money or goods attached, were at the time of the attachment his property.

Substance of the bill.

Rule for probation.

Whereupon the plaintiff's attorney procures from the registrar a rule for probation (*c*), praying in what manner the approver claims property. The approver then files his probation (*d*), which contains his statement, shewing how he became entitled to the property in the monies or goods attached.

Probation.

Replication.

The plaintiff then replies to the probation, traversing any material allegation or allegations in the probation, and concluding to the country (*e*), and proceeds to trial as in the ordinary issues in the Court, for which see the rules in ordinary actions in the Appendix.

Rules relating to bills of proof.

The rules lately adopted by the Court with respect to bills of proof, are as follows :—

When filed without affidavit of merits.

No bill of proof in any attachment be filed within four days of the day of trial of such attachment without an affidavit of merits.

When with.

The approver to be at liberty to file his probation in the first instance with an affidavit of merits.

No counsel's signature.

No counsel's hand to be required to bills of proof or probation.

With whom filed.

The rule for probation to be filed with the regis-

(*b*) See form in Appendix, No. xxx.
(*c*) See form in Appendix, No. xxxi.
(*d*) See form in Appendix, No. xxxii.
(*e*) See form in Appendix, No. xxxiii.

trar, and no further time to be allowed to file a probation without an affidavit of merits.

When parties may proceed to trial.

That immediately the plaintiff has pleaded to probation each party may proceed to trial as in ordinary cases (*f*).

Reason for adopting rules.

The rules respecting the affidavit of merits have been adopted to prevent the inconvenience which arose from bills of proof being filed, merely for the purpose of delay. A bill of proof formerly required no affidavit in support of its truth, and was frequently made use of by garnishees as a dilatory plea to put off the trial till the next Court day. This was effected by filing it so late that the plaintiff had not sufficient time to give his rule for probation with effect. It was usually filed at the Court at which the cause was to be tried, and frequently just before the cause was called on. A bill of proof was also in many cases resorted to by the plaintiff in order to gain time, when the garnishee had set down the cause by proviso. A party who claims the property need not file a bill of proof, if he can rely upon the garnishee, who under his plea of *nil habet*, may shew that at the time of the attachment the money or goods in his hands belonged to the approver, and not to the defendant (*g*).

When it should be resorted to.

(*f*) See the rules in ordinary cases in Appendix.

(*g*) See the case of *Barber and others* v. *Devaux and others, Brant, defendant, ante*, p. 41. In the Precedent Book of the Mayor's Court, vol. 1, p. 13, 10 Wm. & M. it is said;—That the proceedings on bills of probation were formerly according to some old entries very frequent, but are now disused. I (Knowlys) observe a copy of proof in these precedents is of the date 17 Eliz. Now, (A.D. 1821) and for many years past they have been very frequent again, and such is the case at the present day. By Knowlys, Recorder.

V. OF APPRAISEMENT OF GOODS ATTACHED AND SEQUESTRATION.

Where attachment made of goods, what jury to find.

WHERE an attachment is made for goods and the garnishee pleads that he had no goods in his hands at the time of the attachment or at any time after, and the plaintiff prove the goods attached or any part of them in his hands, the jury in such case must find for the plaintiff and say what goods they find in the garnishee's hands, whereupon judgment shall be entered: *Ideo consideratʼ est quod fiat appratiatio* (*h*). And thereupon a precept must be made and directed to one of the officers of this Court to appraise the same (*i*) goods, and if the garnishee shall not produce them, the officer shall return an elongavit which is, that the garnishee hath conveyed the goods out of the liberties of the City (*k*).

Judgment how entered.

Precept to issue.

Return.

Rule of Court as to appraisers.

By rule of Court it is ordered, "that all persons "who shall make any appraisement of goods under "an attachment be freemen, and approved by the "Registrar." This is a rule well adapted to protect the interests of the garnishee and defendant, and always prevailed.

Proceedings to assess the value on return of elongavit.

Upon return of elongavit being made by the Serjeant at Mace, the cause may be set down for the next Court day, when the jury must be sworn

(*h*) See form in Appendix, No. XXIV.

(*i*) See form in Appendix, No. XXV.

(*k*) See form in Appendix, No. XXVIII.; and see Lex Lond. 34.

to inquire of the value of the goods found by the former jury to be in the garnishee's hands, and judgment must be entered for the value, according to the verdict of such jury. The plaintiff must prove the value of the goods attached, but need not prove them to be the property of the defendant as that has been already done either by the verdict of the former jury or by the garnishee having allowed judgment by default (*l*).

Jury must find the value at time of attachment.

It was decided in a case in the Mayor's Court: That the jury must assess the value of the goods according to what they were worth at the time of the attachment made, and not according to the price they would fetch on the day of the verdict given in the attachment (*m*). In that case the jury were summoned to assess the value of certain hogsheads of sugar; and it is obvious that this decision from the great fluctuation in the price of articles of merchandize which frequently takes place, is an extremely important one.

Of a sequestration.

Goods may be attached by the custom of London although they are not in the hands of a third person by a sequestration, which is an attachment of the defendant's property upon his own premises within the City when he has absconded. The proceeding is thus explained in *Bohun* (*n*):

When goods may be sequestered.

If A.B. owes money to C.D. and absconds, and happens to leave goods in a house or warehouse

(*l*) See Lex Lond. 34; see form of entry of verdict in Appendix, No. XXVIII.

(*m*) *Edis and another* v. *Gascoigne and another*, Vaillant MS. Cases in M. C. 1802.

(*n*) Bohun's Priv. Lond. 281.

locked up, and no person in the house or warehouse: in such case C.D. may sequester the house or warehouse, and the goods and chattels therein contained, and in six days' time may condemn the goods.

Mode of making a sequestration.

The manner of making a sequestration is as follows:—C.D. *must enter an action of debt against* A.B. *with one of the four attorneys of this Court,* (and now by any attorney of the Court), *and then one of the officers of this Court must go to the same house or warehouse and say these or the like words:*

"I do sequester this warehouse, and the goods "and chattels therein contained, as the proper "warehouse, goods and chattels of A.B. to answer "C.D. in a plea of debt upon a demand of 120*l.*"

Precept to officer, to cause goods to be apprased.

And then must put a padlock upon the door of the house, and set a seal upon the keyhole of the padlock. And after four Court days passed, which is usual in four days the officer will receive a precept to open the warehouse, and cause the goods therein to be inventoried and appraised by any two freemen; and the appraisers must set their names or marks to the same inventory, and come to the next Court, and then take an oath as followeth:

Oath of appraisers.

The oath to be taken by the appraisers:—

"You, and either of you, shall swear that the "appraisement you have made of the goods and "chattels in this schedule or inventory specified; "whereunto you have subscribed your names, is a "just and true valuation and appraisement of the "same goods and chattels, according to the best of "your judgment and skill. So help you God."

Judgment.

The same Court day that the appraisers are

sworn, the plaintiff may have judgment and execution for the goods, bringing two sufficient sureties, who will enter into a recognizance to this effect: viz., *That if the defendant,* A. B., *shall come into Court within a year and a day, and disprove or avoid the debt demanded by* C. D., *that then* C. D. *shall restore the goods, or the value thereof, to* A. B. *or else that they will do it for him.* Pledges to restore.

The defendant may thus come in within a year and a day, and disprove or avoid the sequestration precisely in the same manner as in the case of attachment; if he do not come in within the year and a day, there is judgment in appraisement against him, which is the same as in case of attachment where there is judgment by default. Sequestration; how disproved or avoided.

In the record of a sequestration, the entry of the sequestration (*o*) is immediately after the plaint, there being no summons of defendant and default in the first instance, but the four subsequent defaults must be entered on the record as in the case of an attachment. Record.

(*o*) See form in Appendix, XXIX.

FORMS IN FOREIGN ATTACHMENT.

I.

Form of Affidavit for Money lent, Money paid, and work and labour.

In the Mayor's Court, London.

maketh oath and saith that is and stands justly and truly indebted unto this deponent, in the sum of pounds for money lent and advanced by this deponent to the said at his request, and for money paid, laid out, and expended by this deponent, to and for the use and on the account of the said , and at his request and for work and labour done and performed by this deponent for the said and at his request.

Sworn at the Mayor's Court Office, London, this day of 18 , before &c. } Signature of Deponent.

II.

Form of an Affirmation for Money Paid.

In the Mayor's Court, London.

of , being one of the people called Quakers, solemnly maketh affir-

mation and saith, that is and stands justly and truly indebted unto this affirmant, in the sum of pounds, for money paid, laid out, and expended by this affirmant to and for the use and on the account of the said at his request.

Solemnly affirmed at the Mayor's Court Office, this day of 18 , before &c. } Signature of Affirmant.

III.

Affidavit verifying Affidavit of Debt made in Scotland.

In the Mayor's Court, London.

of , maketh oath and saith, that he knows and is well acquainted with the handwriting of the Honourable Lord Cowan, and that the said Lord Cowan is one of the judges of the Supreme Court of Scotland, and duly authorized to administer oaths; and that the name or signature and addition "John Cowan, one of the "Judges of the Supreme Court of Scotland," set or subscribed to the affidavit of hereunto annexed is of the proper handwriting of the said Lord Cowan as this deponent verily believes.

Sworn at the Mayor's Court Office, London, this day of 18 , before &c.

IV.

Affidavit of Debt upon a Charter Party.

In the Mayor's Court, London.

of , maketh oath and saith that a certain charter party dated the day of , One thousand eight hundred and , was made and entered into between this deponent and A. B., C. D., E. F., and G. H., whereby the said A. B., C. D., E. F., and G. H., undertook that a certain ship or vessel called the should proceed on a voyage to and there load a cargo of corn, and return with same to some port in England. And this deponent further saith that the said A. B., C. D., E. F., and G. H., became bound to this deponent in the penal sum of pounds for the performance of such charter party. And this deponent further saith that the said ship or vessel did not proceed to , and there load the said cargo, of corn as undertaken by the said A. B., C. D., E. F., and G. H., by the said charter party, made and entered into as aforesaid, and whereby the said penalty has been incurred to this deponent.

Sworn at the Mayor's Court Office, London, this. day of 18 before &c. } Signature of deponent.

V.

Affidavit stating the nature of a Debt.

In the Mayor's Court, London.

, of , Esquire, maketh oath and saith, that her most Christian

Majesty Dona Isabel Segundar, Queen of Spain, is justly and truly indebted unto this deponent in the sum of pounds sterling and upwards, for interest upon and by virtue of certain bonds or certificates bearing date respectively the day of One thousand eight hundred and , and duly made and entered into by or on behalf of her Majesty the Queen Regent of Spain aforesaid, in the name of her august daughter the said Dona Isabel Segundar, Queen of Spain, by virtue of the law decreed by the Cortes and sanctioned by her said Majesty the Queen Regent, in the name of her said daughter Dona Isabel Segundar, Queen of Spain, the day of , One thousand eight hundred and , and of the treaty between the Minister Secretary of State for the Finance department of Spain, and Monsieur Ardoin, banker of Paris, the day of , One thousand eight hundred and , and which said interest was due and payable on certain days now past.

Sworn at the Mayor's Court Office, London, this day of before, &c. } Signature of Deponent.

VI.

Entry of Action.

In the Mayor's Court, London.

day of 18

defendant,

at the suit of plaintiff,

in a plea of debt upon demand of pounds of lawful money of Great Britain.

Pledges, &c.

Sworn £

VII.

Notice of Motion to file Common Bail.

Plaintiff.
Defendant.
Garnishee.

Notice of motion
Dated
18 . } Mr. (the attorney).

Take notice that this Honourable Court will be moved on day next, or so soon after as counsel can be heard, that common bail may be filed in dissolution of the above attachment on the ground of the insufficiency of the plaintiff's affidavit. And take notice that the defendant will move for a rule absolute in the first instance, and that in the meantime all further proceedings be stayed.

Yours &c.,
Defendant's Attorney.

VIII.

Certificate of Bail in dissolution put in by Defendant.

In the Mayor's Court, London.

Between Plaintiff.
Defendant.
Garnishee.

This is to certify, that bail has been put in for the above named defendant at the suit of the above named plaintiff, and in dissolution of the attachment

made in your hands, on the day of 185 , whereby the said attachment is dissolved, made void and of none effect.

Dated the day of 185 .

To

the above named garnishee.

IX.

Certificate of Surrender of Defendant in dissolution of Attachment.

In the Mayor's Court, London.

Between Plaintiff.

Defendant.

Garnishee.

This is to certify, that the above named defendant did this day surrender body into the custody of one of the serjeants-at-mace of this Court at the suit of the above named plaintiff, and in dissolution of an attachment made in your hands, on the day of 185 , whereby the said attachment is dissolved, made void and of none effect.

Dated the day of 185 .

To

the above named garnishee.

X.

Record.

day of 18 , Plaintiff appoints his stead his attorney. in { Before the Mayor and Aldermen in the chamber of the Guildhall of the City of London.

Plaint by his attorney, demands against pounds of lawful

money of Great Britain, which he owes to and unjustly detains from the said plaintiff. For that whereas the said defendant on the day of in the year of the reign of her present Majesty Queen Victoria, at the parish of St. Helen, London, and within the jurisdiction of this Court for and in consideration of divers sums of money before that time due and owing from the said defendant to the said plaintiff at the parish aforesaid and within the jurisdiction aforesaid, and then being in arrear and unpaid granted and agreed to pay to the said plaintiff the said sum of pounds above demanded, where and when he the said defendant should be thereunto afterwards required. Yet notwithstanding the said defendant although often thereto requested, hath not yet paid to the said plaintiff the said sum of pounds above demanded, or any part thereof, to the damage of the said plaintiff twenty shillings, and therefore he brings his suit, &c.

Pledges to prosecute { John Doe and Richard Roe.

Sworn £ day of 18 .

XI.

Plaintiff prays process.

And the said plaintiff by his said attorney prays process according to the custom &c., and it is granted, &c., and thereupon it is commanded by the Court to one of the serjeants-at-mace of the said Court that he, according to the custom of the said City, summon by good summoners the said defendant to appear here in this Court to answer the said plaintiff in the plea aforesaid and that he return and certify what, &c. And afterwards, to wit, at the same Court the said serjeant-at-mace returned and certified to the said Court according to the custom, &c., that the said defendant had nothing within the said City or the liberties thereof whereby he could

Serjeant-at-mace commanded to summon defendant.

Return of *nihil* and *non est inventus*.

be summoned, nor was he to be found within the same. And at thesame Court the said defendant was solemnly called and did not appear, but made default and now at this same Court it is alleged by the said plaintiff by his said attorney, *that the garnishee, owes to the said defendant pounds in monies numbered as the proper monies of the said defendant, and now has and detains the same in his hands and custody.* And therefore the said plaintiff by his said attorney prays process according to the custom &c. to attach the said defendant by the said pounds so being in the hands and custody of the said garnishee as aforesaid, so that the said defendant may appear in this Court here to be holden &c., to answer the said plaintiff in the plea aforesaid, whereupon it is commanded by the Court to the said serjeant-at-mace that he, according to the custom &c. attach the said defendant by the said pounds, so being in the hands and custody of the said garnishee as aforesaid, and the same in his hands and custody defend and keep so that the said defendant may appear in this Court here to be holden &c. to answer the said plaintiff in the plea aforesaid. And that the said serjeant-at-mace return &c. and afterwards (to wit) at a Court holden &c. on aforesaid, the said plaintiff by his said attorney appears, and the said serjeant-at-mace returned and certified to the same Court that he by virtue of the said precept on the day of between the hours of and in the noon, had attached the said defendant by the said pounds so being in the hands and custody of the said garnishee and the same defended &c. according to the custom, &c. so that the said defendant might appear at this Court to answer the said plaintiff in the plea aforesaid. And thereupon the said defendant at the same Court was solemnly called and did not appear but made a first default, which said first default at the same Court is recorded according to the custom &c.; and a further

That defendant was called and did not appear.

Surmise (as the case may be).

Plaintiff prays process against the garnishee.

Serjeant-at-mace commanded to attach defendant by money in hands of garnishee.

Return of serjeant-at-mace that he had attached defendant &c.

1st default.

day is given by the Court to the said defendant to appear at the next Court to be holden &c., on the day of , at which said next Court holden &c. the said plaintiff by his said attorney appears and offers himself against the said defendant in the plea aforesaid and thereupon at the same Court the said defendant was again solemnly called and did not appear, but made a second default, which said second default is recorded &c. And thereupon a further day is given by the Court to the said defendant to appear at the next Court to be holden &c. on the day of aforesaid, at which said next Court holden &c. the said plaintiff by his said attorney appears and offers himself against the said defendant in the plea aforesaid, and the said defendant was again solemnly called and did not appear, but made a third default, which said third default is recorded &c. And thereupon a further day is given by the Court to the said defendant to appear at the next Court to be holden &c. on the day of at which said next Court holden &c. the said plaintiff by his said attorney appears and offers himself against the said defendant in the plea aforesaid; and thereupon the said defendant was again solemnly called and did not appear, but made a fourth default, which said fourth default is recorded &c. And thereupon after the said four defaults recorded by the Court against the said defendant in the plea aforesaid according to the custom &c., the said plaintiff by his said attorney, prays process according to the custom &c. to warn the said the garnishee to be and appear in this Court to shew cause &c., whereupon at the same Court holden &c. it is commanded by the same Court to the said serjeant-at-mace that he, according to the custom of the City, warn and make known to the said garnishee to be and appear here in this Court to be holden &c. on the day of to shew cause &c. why the said plaintiff ought not to have execution of the said

2nd default.

3rd default.

4th default.

Plaintiff prays process to warn garnishee.

Summons granted.

pounds so attached in his hands and custody as aforesaid; and that the said serjeant-at-mace return and certify at the same Court what &c.; the same day is given by the Court to the said plaintiff to be there &c., at which said Court holden &c. the said plaintiff by his said attorney appears, and the said serjeant-at-mace hath returned and certified to the same Court that he by virtue of the said precept to him directed and according to the custom &c. had warned and made known to the said garnishee to be and appear at this same Court to shew cause &c. as above commanded, and thereupon at the same Court the said garnishee was solemnly called and appears, and appoints in his stead , his attorney, and hath leave to imparle until &c.

Return.

Appearance of garnishee.

XII.

Plea.

And the said garnishee, by his attorney, on the day of , in the year of the reign aforesaid, comes and says that the said plaintiff ought not to have execution of the said pounds in monies numbered [or judgment of appraisement of the said goods and chattels] so attached as aforesaid, or any part thereof. Because he says, that at the time of making the said attachment, or at any time since, he had not owed to or detained from, or yet has owes to or detains from the said defendant named in the bill original and attachment aforesaid, the said pounds or any part thereof, [or the said goods and chattels or any part thereof,] in manner and form as the said plaintiff by his attachment has above supposed. And of this he puts himself upon the country, &c. And the said plaintiff doth the like. Therefore, &c.

XIII.

Postea on Verdict for Plaintiff.

Afterwards, that is to say, on the day of in the year of the reign of her present Majesty, the jurors of the jury aforesaid being solemnly called, twelve of them appeared, who being elected, tried and sworn upon the said jury, according to the custom of the said City, to declare the truth of, and concerning the premises, and to try the issue joined between the said parties in the plea aforesaid, for their verdict upon their oath, say that at the time of making the attachment aforesaid, the said , the garnishee, owed to, and detained from the said the defendant named in the bill original and attachment aforesaid, the said sum of pounds in monies numbered, as the proper monies of the said defendant, in manner and form as the said plaintiff by his said bill original and attachment aforesaid hath above supposed. Therefore it is considered by the Court, that the aforesaid plaintiff have execution of the said pounds in monies numbered, so attached as aforesaid, and by the jury found as aforesaid by pledges, &c. of the defendant, &c. and process for the remainder, &c.

XIV.

Entry on the roll of Judgment for want of Appearance in the case of Attachment of Money.

And thereupon at the same Court the said garnishee is solemnly called and doth not appear, but makes default. Therefore it is considered by the

Judgment, 18 . Court, that the aforesaid plaintiff have execution of the said pounds in monies numbered, so attached as aforesaid by pledges, &c. if the defendant, &c. and process for the remainder, &c.

XV.

Judgment against Garnishee by default. The Entry, &c.

And was solemnly called and appears and appoints in his stead his attorney, and has leave to imparle until, &c. the day of 18 . Because the garnishee has not pleaded to the attachment aforesaid, or shewn any cause why the said plaintiff should not have execution as aforesaid. Therefore, &c.

XVI.

Pledges to restore Recognizance.

Security given, 18 . { Pledges for the within named plaintiff to restore, &c. if the defendant, &c. that is to say.
A. B. Street, Merchant.
C. D. Street, Merchant.

XVII.

Precept of Execution.

To one of the Serjeants-at-Mace, &c. or to any other Serjeant-at-Mace, &c. } By the Mayor, &c.

We command you that you take

if be to be found within the liberties of the city of London, and safely keep so that you have bod here in Court without delay to satisfy heretofore attached in hands at the suit of the said as the proper of defendant, by due process of attachment and judgment of the Court here before us recovered against the said and have you the said here in Court without delay to render to the said according to the tenor and effect of the said judgment thereof given: and this you are not to omit on the peril incumbent: and have you there this precept. Dated in the chamber of the Guildhall of the City of London this day of in the year of our Lord One thousand eight hundred and

Attorney for the plaintiff (*a*).

XVIII.

Entry of Satisfaction indorsed on the Roll.

And the said plaintiff in his own proper person came here into Court, and according to the custom of the said City, found sufficient pledges to restore, &c. if the defendant, &c. that is to say and and thereupon a precept being delivered to the said plaintiff, had execution of the said sum of and thereof hath acknowledged himself satisfied.

Signature of plaintiff.

(*a*) By a rule of Court all precepts of execution to be sealed at the office upon filing a *præcipe*.

XIX.

Power of Attorney to sign Satisfaction.

In the Mayor's Court, London.

Plaintiff.
Defendant.
Garnishee.

Know all men by these presents, that I the above named plaintiff, have made, ordained, authorized, constituted and appointed, and by these presents, Do make, authorize, constitute and appoint of the Lord Mayor's Court, London, or any other attorney of the same Court, to enter up and acknowledge satisfaction upon record of a judgment, to be entered upon a verdict obtained by me, for upon an attachment made in the hands of the above named garnishee, as the proper monies of the above named defendant, according to the custom of the City of London. And for you or any of you so doing, this shall be your sufficient warrant and authority. In witness whereof I have hereunto set my hand and seal the day of in the year of our Lord One thousand eight hundred and .

Signature of plaintiff.

Sealed and delivered by the above named in the presence of .

XX.

Certificate of Judgment against the Garnishee and of Sureties found.

Mr. (name of garnishee).

This is to certify that judgment hath been entered

against you, in the Lord Mayor's Court, London, at the suit of plaintiff, for the sum of heretofore attached in your hands as the proper monies of defendant, and that security hath been given by the plaintiff in the said attachment for restitution of the said monies, if his debt should be disproved or avoided according to the custom, as by the record of the said judgment, now remaining in the said Court appears. Dated the day 18 .

A. B.
Plaintiff's attorney,
of .

XXI.

Attachment Paper.

To

day of 185 .

Take notice, that by virtue of an action entered in the Lord Mayor's Court, London, on the day of , against , defendant at the suit of , plaintiff, in a plea of debt upon demand of

Sworn £ .

I do attach all such monies, goods, and effects, as you now have, or which hereafter shall come into your hands or custody of the said defendant, to answer the said plaintiff, in the plea aforesaid, and that you are not to part with such monies, goods, or effects without licence of the said Court.

A. T.,
Plaintiff's attorney,
of

Serjeant-at-Mace,
Lord Mayor's Court.
Office.

XXII.

Summons to the Garnishee to appear.

You are hereby summoned to be and appear in the Queen's Majesty's Court to be holden before the Mayor and Aldermen in the chamber of the Guildhall of the City of London, on the day of , at ten of the clock in the forenoon, to shew cause why plaintiff, shall not have judgment against you for pounds in monies numbered, [or in the case of goods for four boxes, numbered and marked respectively 1, 2, 3, 4, as the case may be, *and the goods and chattels therein contained*], heretofore attached in your hands as the proper *monies* (or *as the proper goods and chattels*, as the case may be), of , defendant, and hereby take notice, that if you do not appear, judgment will be entered against you for the same. Dated at the Guildhall, London, the day of 18 .

Attorney for the plaintiff, of

A. B. Serjeant-at-Mace.

XXIII.

Certificate of withdrawment of Attachment.

Mr.

This is to certify that the attachment made in your hands on an action of debt, entered in the Mayor's Court, London, on the day of against , defendant, at the suit of , plaintiff, was this day withdrawn, whereby the same is dissolved, made void, and of non effect. Dated at the Guildhall, London, this day of 185 .

XXIV.

Judgment in case of Goods.

Therefore it is considered by the Court that an appraisement be made of the said goods and chattels, &c. Whereupon at the further petition of the said plaintiff, it is by the same Court commanded to one of the serjeants-at-mace, that he cause the said two packages marked respectively X. and Y. to be opened in his presence, and the same, and the goods and chattels therein contained, to be appraised in the presence of him the said serjeant-at-mace, according to the custom of the said City, so that he have an appraisement thereof here in Court, on the day of , in the year of the reign aforesaid.

XXV.

Precept of Appraisement.

By the Mayor, &c.

To one of the serjeants-at-mace, or any other of the serjeants-at-mace.

We command you that, according to the custom of the City of London, you cause to be opened in your presence, two packages marked X. and Y., and the same, and the goods and chattels therein contained, by two freemen of the City of London, in your presence, to be appraised as the proper goods and chattels of , defendant, attached in the

hands and custody of , garnishee at the suit of , plaintiff, so that you have the said appraisement here in Court without delay. Dated at the Guildhall, London, this day of 18 .

Plaintiff's attorney,
of

XXVI.

Form of the Inventory and Appraisement.

An inventory and appraisement, taken this day of 18 , by A. B. and C. D., of two packages marked respectively X. and Y., lately attached in the Mayor's Court, London, by , plaintiff, in the hands and custody of , garnishee, and of the goods and effects therein contained, viz. (specify the articles), as the proper goods and chattels of , defendant, which said goods and chattels, together with the said packages, are valued by us at pounds.

A. B., citizen and fishmonger.
C. D., citizen and painter.

Sworn in Court this day of , 185 .

XXVII.

Entry on the roll of Appraisement, and Judgment thereon.

On which day the serjeant-at-mace, returned and certified to the said Court, that he, by virtue of the

said precept to him directed, had caused the said two packages marked respectively X. and Y. to be opened, and the same, and the contents thereof, that is to say (as the case may be), to be appraised on the oaths of A. B. and C. D., citizens of London, to the value of pounds, which said appraisement, the said serjeant-at-mace has ready here in Court, as to him above was commanded, and thereupon the said plaintiff prays execution of the said goods and chattels to be awarded to him, &c. Therefore it is considered by the Court that the aforesaid plaintiff have execution of the said goods and chattels so attached and appraised as aforesaid by pledges, &c., if the defendant, &c., and process for the remainder, &c.

Final judgment, day of 18

XXVIII.

Entry of Verdict on Elongavit.

On which said day (*that is to say on the return day of the precept*) the said serjeant-at-mace, returned and certified to the said Court, that the goods and chattels aforesaid, to places unknown out of the liberties of the said City are eloigned, so that an appraisement thereof could not be made, as to him the said serjeant-at-mace was above commanded. And because the said garnishee hath eloigned the said goods and chattels out of the liberties of the said City, so that the same cannot be appraised. Therefore it is commanded by the said Court, that an inquiry be made of the value thereof, &c. and it is commanded by the said Court, to the said serjeant-at-mace, that he summon a jury to inquire and assess the value of the said goods and chattels so eloigned as aforesaid, whereupon the

said serjeant-at-mace returned and certified to the said Court, that he, by virtue of the said precept to him directed, had, according to the custom of the said City, summoned a jury to inquire and assess the value of the said goods and chattels, and on the day of in the year of the reign of her present Majesty Queen Victoria, the jurors aforesaid being solemnly demanded, twelve of them (that is to say) A., B., C., D., &c. appeared, who being elected, tried and sworn according to the custom of the said City, to declare the truth of and concerning the premises, and to inquire the value of the said goods and chattels so eloigned as aforesaid, upon their oath, assess the value of the same, at . Therefore, &c.

XXIX.

Entry of Sequestration on the Record.

On the day of in the said year of the reign aforesaid, between the hours of and in the forenoon of the same day, a sequestration is made of a certain warehouse of the said defendant, situate in in the parish of , in the ward of . And also the same day and year, between the hours aforesaid, the said defendant is attached by divers goods and chattels in the said warehouse contained, as the proper goods and chattels of the said defendant, being sequestered, attached and defended by serjeant-at-mace.

XXX.

Bill of Proof.

And now come here into Court in their own

proper persons of gentleman and of gentleman and pray to be admitted to prove a certain sum of pounds in the hands and custody of , attached and defended and under and by colour of a certain bill, original affirmed against , defendant, at the suit of , plaintiff, in a plea of debt upon demand of pounds of lawful money of Great Britain in the Court here on the day of , and in a certain schedule or record of attachment to this plea annexed, specified to be the proper monies of and belonging to these approvers, and because no other person at the time of the said attachment or at any time since had or hath any right or property in the said monies except the said approvers. These approvers do not make this proof by fraud or collusion to exclude the aforesaid plaintiff or others from their actions, and humbly pray to be admitted to make this proof according to the custom, &c.

XXXI.

Rule for Probation.

And the said plaintiff by his attorney, prays in what manner the said approvers claim property, &c. day of , 18 .

XXXII.

Probation.

And the said the approvers by their attorney, come and say they claim an interest in the sum of money so as aforesaid attached and

defended for this, that the said sum that has been so attached as aforesaid at and ever since the time when it first came into the hands of the said garnishee, hitherto and at and ever since the time when it first became due from the said garnishee, hitherto has been, and was and now is due from the said garnishee, for and in respect of certain money theretofore, and before the said attached sum was so attached as aforesaid, to wit, on the day of , in the year of our Lord one thousand eight hundred and fifty , received by the said garnishee for the use of the said approvers, and amounting to the amount of the said sum so attached. And the said approvers further say, that the said attached sum continually at and from the time when the said money for, and in respect whereof the said attached sum was, and is so due as aforesaid, hitherto hath been and now is due and owing from the said garnishee to the said approvers, for money so as aforesaid received by the said garnishee for the use of the said approvers, and never was, nor was any part thereof ever due or owing to the said defendant. And the said approvers further say, that the said attached sum from the time of the said receipt of the said money, for and in respect whereof the said attached sum was and is so due and owing as aforesaid, hitherto has been and now is in the hands of the said garnishee and by him detained for the use of them, the said approvers. Wherefore the said approvers, for themselves, claim the said sum of money so attached and defended as aforesaid, and say, that they are ready to verify the premises, and that the said sum of money was before and at the time when the same was so attached as aforesaid; and now is the property of the said approvers in manner and form as the said approvers have claimed to themselves the property thereof, and they pray to be admitted to prove this according to the custom of the said City of London.

XXXIII.

Replication.

And the said plaintiff, by his attorney, as to the probation of the said approvers says, that the said sum of money so attached as aforesaid, has not been, nor was, nor is due from the said garnishee, nor has the same been, nor is the same in the hands of the said garnishee, and by him detained for the use of the said approvers, in manner and form as alleged by the said approvers in their said probation; but on the contrary thereof, the said sum so attached as aforesaid, is due and owing by the said garnishee to the said defendant, and is not the property of the said approvers; and this, the plaintiff prays may be inquired of by the country, &c.

XXXIV.

Judgment for Want of Probation.

Because the said approver hath not set forth in what manner he claims the property attached. Therefore it is considered by the Court, that he take nothing by his bill of proof aforesaid, and that the garnishee go acquitted thereof, without a day, &c. Judgment day of , 185 .

XXXV.

The Commencement and Conclusion of a Bill on the Equity side of the Mayor's Court.

To the Right Honourable
Lord Mayor of the City of London, and to hi

Right Worshipful Brethren, the Aldermen of the same city.

"In all humility complaining, sheweth unto your "Lordship and Worships, your daily orator, C.D., "&c. Or humbly complaining, sheweth, &c."

The conclusion thus:

"May it therefore please your Lordship and "Worships, out of your accustomed goodness, to "cause the said to be warned by one of "your Lordship's and Worship's serjeants-at-mace, "and ministers of this Honourable Court, personally "to be and appear in the same Court at a day cer- "tain, to be by your Lordship and Worships to "him thereunto prefixed; then and there to make "answer unto all and singular the premises upon "his corporal oath: And that he may be enjoined "to stand unto, perform and abide such order and "decree in the premises, as to your Lordship and "Worships, upon hearing the cause shall seem "meet" (a).

(a) See Below, 297.

RULES OF COURT AND FORMS OF PROCEEDING IN ORDINARY ACTIONS IN THE MAYOR'S COURT.

All proceedings in the Lord Mayor's Court are commenced by plaint, otherwise bill original without writ.

The action is commenced by entering in the office of the Court the particulars of such action, in the following form.

1. Entry of action.

In the Mayor's Court, London.

day of 185

Defendant,

at the suit of Plaintiff,

in a plea of [as the case may be].

Pledges, &c.

Plaintiff's Attorney,
[Address].

After this is entered, a copy must be prepared by the plaintiff's attorney, which must be sealed in the office of the Court, and served upon the defendant, with a notice thereunder, in the following form:

2. Notice thereon.

Take notice, that the above action has been commenced against you, and unless you appear thereto within eight days from the service hereof, judgment will be signed against you by default.

The plaintiff claims the sum of £ for [here state the particulars of the cause of action, as in the case of a special endorsement on the writ of summons in the superior Courts] and £ for costs; and if the same be paid to me within eight days from the service hereof, all further proceedings will be stayed.

Plaintiff's Attorney,
[Address].

To Mr.
the above named defendant.

Care must be taken to have the form filled up, as in the event of any omission of the particulars of demand or otherwise, should the defendant apply to the Court thereon, the plaintiff would in all probability be made to pay the costs of such application.

The defendant, upon being served with the copy of the action, has eight days to appear,

If he appears, he must enter such appearance in the office by *præcipe*, in the following form:

3. Entry of appearance.

In the Mayor's Court, London.

Plaintiff.

Defendant.

Action entered	day of	185
Appearance of Defendant	day of	185

Defendant's Attorney.
[Address].

Notice of this appearance must be given to the plaintiff's attorney; and if the defendant's attorney do not give such notice, although such appearance be entered, and the plaintiff's attorney sign judgment against the defendant for want of such appearance, the defendant will have to move the Court to set aside the judgment; and if the motion be granted, it will be upon an affidavit of merits and payment of costs.

If the defendant appears, the plaint must be engrossed upon parchment, and must in all particulars correspond with the entered action. The customary count on debt is particularly recommended, as comprehending all actions for liquidated demands, where a granting and agreeing to pay can legally exist between the parties.

The form is as follows:

4. Plaint.

Before the Mayor and Aldermen, in the

Chamber of the Guildhall of the City of London.

by his attorney, demands against £ of lawful money of Great Britain, which he owes to and unjustly detains from the said plaintiff; For that whereas the said defendant on the day of in the year of the reign of her present Majesty Queen Victoria, at the parish of St. Helen, London, and within the jurisdiction of this Court, for and in consideration of divers sums of money before that time due and owing from the said defendant to the said plaintiff, at the parish aforesaid, and within the jurisdiction aforesaid, and then being in arrear and unpaid, granted and agreed to pay to the said plaintiff the said sum of £ above demanded, where and when he the said defendant should be thereunto afterwards required. Yet notwithstanding, the said defendant, although often thereto requested, hath not yet paid to the said plaintiff the said sum of £ above demanded, or any part thereof, to the damage of the said plaintiff twenty shillings, and therefore he brings his suit, &c.

Pledges to prosecute } John Doe, and Richard Roe.

day of 185

Suitors, however, are not restricted to this count, nor indeed, to any particular form of declaration at present, but the ordinary short counts used in the superior Courts prior to the Common Law Procedure Act, have been in general use in this Court when the above count has not been relied on.

After the bill has been engrossed, a copy is to be delivered to the defendant's attorney, and if delivered on or after the third day after the entry of the appearance, it may be delivered with or without a demand of plea; but no judgment can be signed

for want of a plea until such demand shall have been made; nor can any demand of plea be made until after two clear days after entry of the appearance.

The engrossment, and the copy delivered, should have the warrants entered in the margin.

day of 185

The plaintiff appoints in his stead his attorney

5. Entry, after plaint delivered.

day of 185

The defendant appears, and appoints in his stead his attorney, and hath leave to imparle until, &c.

The defendant has four clear days' time after demand of plea to plead; and if he do not plead within the four days, the plaintiff may sign judgment for want of a plea.

If the defendant plead to the action, he must deliver a copy of such plea, signed by the attorney, to the plaintiff's attorney, who should thereupon engross it upon the record, and add the joinder of issue, giving notice thereof to the defendant.

If the plaintiff proceed upon the customary count before mentioned, the usual plea of the defendant is *nil debet.*

6. Plea.

And the said the defendant, by his attorney, comes and defends the wrong and injury, &c., and says that he doth not owe to the said plaintiff the said sum of £ above demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof declared against him; and of this he puts himself upon the country, &c.

7. Joinder of issue.

In case of a replication by the plaintiff, or any subsequent pleading, the defendant may join issue, giving the plaintiff notice thereof, as "the defendant joins issue on the plaintiff's replication" [or as the case may be].

If the plaintiff do not reply, other than joining

issue, &c. to the plea of the defendant when such replication is necessary, the defendant may demand a replication of the plaintiff; and if he do not deliver such replication within four days after demand, not having obtained further time to reply, the defendant may sign judgment for want of prosecution.

If the plaintiff do not join issue upon the record by adding the *similiter*, and give notice thereof to the defendant, the defendant may demand such joinder of issue of the plaintiff; and if the plaintiff do not so join issue as above, and give notice of his having so done to the defendant within four days after such demand, the defendant may sign judgment for want of prosecution.

Upon the cause being at issue, the plaintiff's attorney may enter the same for trial in the office of the Court, as

8. Entry for trial.

In the Mayor's Court, London.

A. B. *versus* C. D.

Action entered day of 185 .

Notice of trial for the day of 185 .

Plaintiff's Attorney,
(Address.)

and must thereupon give to the defendant not less than eight, or more than twelve, days' notice of trial.

The subpœnas are to be issued by the respective attorneys, and must be sealed at the office of the Court, and may be issued immediately after the cause is at issue.

The plaintiff must, within two days, exclusive of the day of trial, lodge the record in the office of the Court, endorsed with the day for which notice of trial is given.

The plaintiff may countermand his notice of trial

any day not within three days of the day of trial, exclusive of the day of trial.

All trials in this Court are with counsel and by jury, and are conducted, as to rules of evidence, in the same manner as the Courts at Westminster.

If the plaintiff do not enter the cause for trial within ten days after the same is at issue, the defendant may do so, and give notice of trial to the plaintiff's attorney, and proceed to try by *proviso*, leaving with the Registrar a record two days before the day of trial, endorsed with the day of trial.

If the plaintiff countermand his notice of trial, the defendant may, after four days from the countermand, himself give notice of trial to the plaintiff's attorney, and proceed thereon to trial as before.

Upon the trial of the cause in ordinary cases, one counsel only will be allowed; but the plaintiff or defendant's attorney must exercise his judgment as to employing one or more counsel on either side, by the merits of each case,

If the plaintiff succeed in obtaining a verdict, the record will be delivered to him, and thereupon he must make an entry on the record, in the following form:

9. Entry after verdict for plaintiff.

Therefore, let a jury be summoned according to the custom, *&c.*; and at the same Court a precept is directed to one of the serjeants-at-mace of the said Court, that he, according to the custom, &c. summon to the said Court, to be held on the day of then next, twenty-four, &c., by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.; and the same day is given to the plaintiff and defendant aforesaid to be there, &c.

Afterwards, that is to say, on the day of in the year of our Sovereign Lady Queen Victoria, the jurors of the jury aforesaid being solemnly called, twelve of them appeared, who being elected, tried, and sworn

upon the said jury, according to the custom of the said City, to declare the truth of and concerning the premises, and to try the issue joined between the said parties in the plea aforesaid, for their verdict upon their oath say that the said defendant oweth to the said plaintiff the said sum of £ above demanded, [or £ parcel, &c., *as the case may be*] in manner and form as the said plaintiff hath above declared against him; and they assess the damages of the said plaintiff by reason of detaining the said debt, besides the costs and charges he hath been put to in and about his suit in that behalf, to twelve pence; and for those costs and charges to twelve pence.

10. Entry of judgment.

One day's notice of taxation of costs is requisite, and the judgment may be entered up as follows:

Therefore it is considered by the Court that the aforesaid plaintiff recover against the said defendant his said debt and the damages aforesaid, by the jury aforesaid in form aforesaid found, and also the further sum of £ for his costs and charges adjudged of increase to the said plaintiff with his assent, which said debt, damages, and costs, in the whole amount to £ ; and the said defendant in mercy, &c.

11. Docquet thereof.

A docquet of which judgment must be filed in the office of the Court, in the following form:

In the Mayor's Court, London.

Plaintiff.

Defendant.

Action entered day of 18

Judgment on verdict day of 18

Debt, £ Costs, £

Plaintiff's Attorney.

(Address.)

and execution may thereupon issue, in the following form, which will be sealed at the office upon filing a *præcipe:*

12. Execution.

To one of the serjeants-at-mace, &c., or to any other serjeant-at-mace, &c. } By the Mayor.

Take if he be to be found within the liberties of the City of London, and him safely keep, so that you have his body here in Court without delay, to satisfy as well a certain debt of which the said lately in the Queen's Majesty's Court holden before us the said Mayor and Aldermen in the Chamber of the Guildhall of the said City recovered against him; and also which in the said Queen's Majesty's Court holden before us the said Mayor and Aldermen in the Chamber of the Guildhall of the said City were adjudged to the said for his damages sustained, as well by detaining the said debt as for his costs and charges about his suit in that behalf expended, whereof the said is convicted, as appears to us the said Mayor and Aldermen of record. And have there this precept. Dated at the Guildhall, London, this day of in the year of our Lord One thousand eight hundred and fifty-

Plaintiff's Attorney.
(Address.)

13. Levy.

To one of the serjeants-at-mace, &c. } By the Mayor.

Levy on the goods and chattels of within the liberties of the City of London, as well a certain debt of which lately in the Queen's Majesty's Court holden before us the said Mayor and Aldermen in the Chamber of the Guildhall of the said City re-

covered against him; as also which in the said Queen's Majesty's Court holden, &c. were adjudged to the said for his damages sustained, as well by detaining the said debt as for his costs and charges about his suit in that behalf expended, whereof the said is convicted, as appears to us the said Mayor and Aldermen of record. And have you the said monies here in Court without delay, to render to the said for his debt and damages aforesaid: and have there this precept. Dated at the Guildhall, London, this day of in the year of our Lord One thousand eight hundred and fifty-

Plaintiff's Attorney.
(Address.)

If the verdict pass for the defendant, the entry upon the record must be made by the defendant's attorney; and the finding of the jury and judgment will be—

14. Entry of verdict for defendant.

That the said defendant doth not owe to the said plaintiff the said sum of above demanded or any part thereof, in manner and form as the said plaintiff hath above declared against him: therefore it is considered by the Court that the aforesaid plaintiff take nothing by his bill original aforesaid, and that the defendant go acquitted thereof, without a day, &c.; and also that the said defendant recover against the said plaintiff for his costs and charges expended in the defence of the suit, according to the form of the statute in such case made and provided; and that the said defendant have execution thereof, &c.

[*Judgment by default.*]

If the defendant do not appear at the expiration

of the eight days after service, the plaintiff may, on the morning of the ninth, sign judgment. For this purpose the record must be entered up, and an affidavit of service filed in the following form, in the office :—

15. Affidavit of service.

In the Mayor's Court, London.

Plaintiff.
Defendant.

of

maketh oath and saith that he this deponent did, on the day of within the jurisdiction of this Court, personally serve the above-named defendant with a true copy of an action entered against him in this Honourable Court, sealed with the seal of the said Court, at the suit of the above-named plaintiff; and that at the foot thereof there was a notice addressed to the said defendant, in the form directed by this Honourable Court. Sworn, &c.

Common bail must be filed, *sec. stat.*, in the following form :

16. Filing common bail.

In the Mayor's Court, London.

Common bail according to the statute for

Defendant.

at the suit of

Plaintiff.

Entered

Plaintiff's Attorney.

day of 18 , (Address.)

which must be entered in the office, together with a docquet of the judgment, in the following form :

17. Docquet of judgment by default.

In the Mayor's Court, London.

Plaintiff.
Defendant.

Action entered day of 18 .
Judgment by default day of 18 .
Debt £ , costs £

Plaintiff's Attorney.
(Address.)

The record will thereupon be marked with the judgment and the amount of costs, and the plaintiff will be entitled to issue his execution in like form as at page 104.

The judgment will be in the following form:

Because the said defendant comes and defends the wrong and injury when, &c., and says nothing in bar or preclusion of the action of the said plaintiff against him, therefore it is considered, &c. 18. Form thereof.

or, in case the defendant appears but does not plead,—

Because the said defendant hath not pleaded to or otherwise answered the bill original aforesaid, therefore it is considered, &c. 19. Where defendant appears but does not plead.

The docquet, however, must be marked "judgment for want of plea." 20. Docquet.

[*Judgment for want of Prosecution.*]

If the defendant have appeared, and the plaintiff do not on the ninth day after the service deliver a copy of his declaration to the defendant's attorney, the defendant's attorney may demand the same; and if the plaintiff's attorney do not deliver such copy within four days after demand, not having obtained further time, the defendant's attorney may sign judgment for want of prosecution, in the following form:—

Before, &c.
puts in his place
his attorney at the suit of in a plea
of 21. Judgment for want of prosecution.

Whereas an action was entered against the defendant at the suit of the said on the day of and whereas the said appeared thereto; and whereas the said hath not prosecuted his suit with effect, therefore it is considered by the Court, &c.

22. Docquet. A docquet will be necessary on signing the judgment, as in other cases, describing the default as "for want of prosecution."

All applications for time to deliver copy declaration, plead, reply, &c., are to be made by the attorney in the cause, and no counsel's hand is requisite to any pleading.

Plaintiff's Costs in Actions of Debt.

Costs of Action, and Judgment by Default.

	Under £10.		Out of pocket.		£10 and und. £20.		Out of pocket.		£20 and above.		Out of pocket.	
	s	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Letter	2	0	—		3	6	—		3	6	—	
Instructions for action..	2	0	—		3	4	—		6	8	—	
Action and paid	10	0	3	0	14	0	4	0	15	0	5	0
Copy and service.....	2	6	—		3	6	—		5	0	—	
Instructions to proceed	—		—		—		—		3	4	—	
Affidavit	3	0	1	0	4	0	1	0	5	0	1	0
Filing common bail....	2	0	1	0	2	0	1	0	2	0	1	0
Judgment.....	3	0	1	0	5	0	2	0	6	0	2	0
Letters and messengers	—		—		3	4	—		6	8	—	
Writ of execution	4	0	1	0	4	0	1	0	5	0	2	0

Costs to Trial.

Letter before action....	2	0	—		3	6	—		3	6	—	
Instructions to sue	2	0	—		3	4	—		3	4	—	
Action, and paid entering	10	0	3	0	14	0	4	0	15	0	5	0
Copy and service.... .	2	6	—		2	6	—		2	6	—	
Instructions to proceed	—		—		—		—		3	4	—	
Demand of plea	1	0	—		2	0	—		4	0	—	
Instructions for brief ..	3	4	—		6	8	—		—		—	
Brief.....	15	0	—		20	0	—		—		—	

	Under £10.		Out of pocket.		£10 and und. £20.		Out of pocket.		£20 and above.		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Entering plea on record, and issue and notice	3	0	—		5	0	—		5	0	—	
Entering cause for trial, and notice.....	4	0	—		6	0	2	0	8	0	2	0
Subpœna (each)	4	0	1	0	4	0	1	0	4	0	1	0
Copy and service.....	2	6	—		2	6	—		2	6	—	
Fee to counsel.....	23	6	23	6	23	6	23	6	—		—	
Attending him.....	0	0	—		3	4	—		6	8	—	
Attending Court.....	3	4	—		3	4	—		6	8	—	
Entering verdict	2	0	1	0	2	0	2	0	3	0	3	0
Summoning jury, jury and officer	5	0	5	0	5	0	5	0	5	0	5	0
Bill of costs.....	1	0	—		2	0	—		3	0	—	
Notice of taxing	1	0	—		2	0	—		2	0	—	
Attending taxing and signing judgment ..	4	6	1	6	7	0	3	0	9	0	4	6
Letters, &c.....	0	0	—		3	4	—		6	8	—	
Writ of execution	4	0	1	0	4	0	1	0	5	0	2	0

Defendant's Costs.

	Under £10.		Out of pocket.		£10 and under £20.		Out of pocket.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
Instructions to appear	2	0	—		3	4	—	
Appearance and fee.....	6	0	2	0	9	0	3	0
Instructions for plea	2	0	—		3	4	—	
Drawing same, and copy to deliver	4	0	—		5	0	—	
Instructions for brief	3	4	—		6	8	—	
Brief.....	15	0	—		20	0	—	

Further charges as in prior costs.

Fees of Serjeant-at-Mace.

	s.	*d.*
Execution not exceeding £5	3	6
£10	5	0
£20	7	6
£50	10	0
£100	15	0
Upwards	20	0
Execution withdrawn	2	6

Dies non Juridici (*a*).

Notwithstanding, generally speaking, it may be said that *all days* (except Sundays) are *dies juridici* in the Mayor's Court, yet in the course of a year (besides Sundays), are a considerable number of days upon which this Court cannot be held, and which make up its *dies non juridici*. We will enumerate them as particularly as the causes which govern them will admit.

The *dies non* of this Court happening in each year may be classed under three distinct heads, thus, *dies non*, certain as well in number as to the time of the year they happen. *Dies non*, certain in number, but uncertain as to the time of happening. *Dies non*, uncertain as well in number as to the time of happening. In this order we will set them forth.

1st. *Dies non*, certain as well in number as to the time of the year they happen, are in

JANUARY.

All the days in this month till the first Monday after the 6th (the Feast of the Epiphany).

25th. Conversion of Saint Paul.

30th. King Charles' Martyrdom.

FEBRUARY.

2nd. Purification Virgin Mary.

24th. Saint Matthias.

MARCH.

25th. Annunciation Blessed Virgin Mary.

APRIL.

25th. Saint Mark.

MAY.

1st. Saint Philip and Saint James.

29th. King Charles II. Restoration.

(*a*) See Emorson's City Courts, 38.

JUNE.

11th. Saint Barnabas.
24th. Nativity of Saint John Baptist.
29th. Saint Peter.

JULY.

25th. Saint James.

AUGUST.

1st. to 24th. Saint Bartholomew, both days inclusive. } Called the Vacation of August.

SEPTEMBER.

2nd. Fire of London.
21st. Saint Matthew.
29th. Saint Michael and all Angels.

OCTOBER.

18th. Saint Luke.
28th. Saint Simon and Saint Jude.

NOVEMBER.

1st. All Saints.
2nd. All Souls.
5th. Papists' Conspiracy.
30th. Saint Andrew.

DECEMBER.

Christmas Vacation. { 16th. O Sapientia. to Monday next after the 6th of January, the Feast of the Epiphany.

2nd. *Dies non*, certain in number, but uncertain as to the time of happening.

Three days at Shrovetide, viz.:—

Shrove Monday, Tuesday, and *Ash* Wednesday. } *Dies carnis privii. Dies cinerum.*

All the days in the week preceding Easter week. } Vacation of
All the days in Easter week. } Easter.

Four days next following Rogation Sunday, viz. :—

Monday,
Tuesday,
Wednesday,
and
Thursday, being Ascension Day, or Holy Thursday. } Days of the Rogation.

All the days in Whitsun week. } Vacation of Pentecoste.

3rd. *Dies non*, uncertain as well in number as to the time of happening.

The days whereon are held,—

Courts of Common Council.
Sessions of the Peace for the Borough of Southwark, and
Courts of Conservancy, and
The days appointed by Royal Proclamation as days of public fast or thanksgiving.

Such are the vacations or *dies non* of this Court, upon which a judgment cannot be signed, a rule entered or any other act done which requires, or is supposed to require, the order or interference of the judges of the Court, except in the case of apprenticiality; but on such days, as well as on a Court day, an action or other proceeding may be commenced, and process thereupon issued and served, and the party may appear thereto, and such other business of the like nature may be transacted in this Court, upon the *dies non juridici* thereof, as in the Courts of *Westminster* during the vacations there.

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THE END.

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